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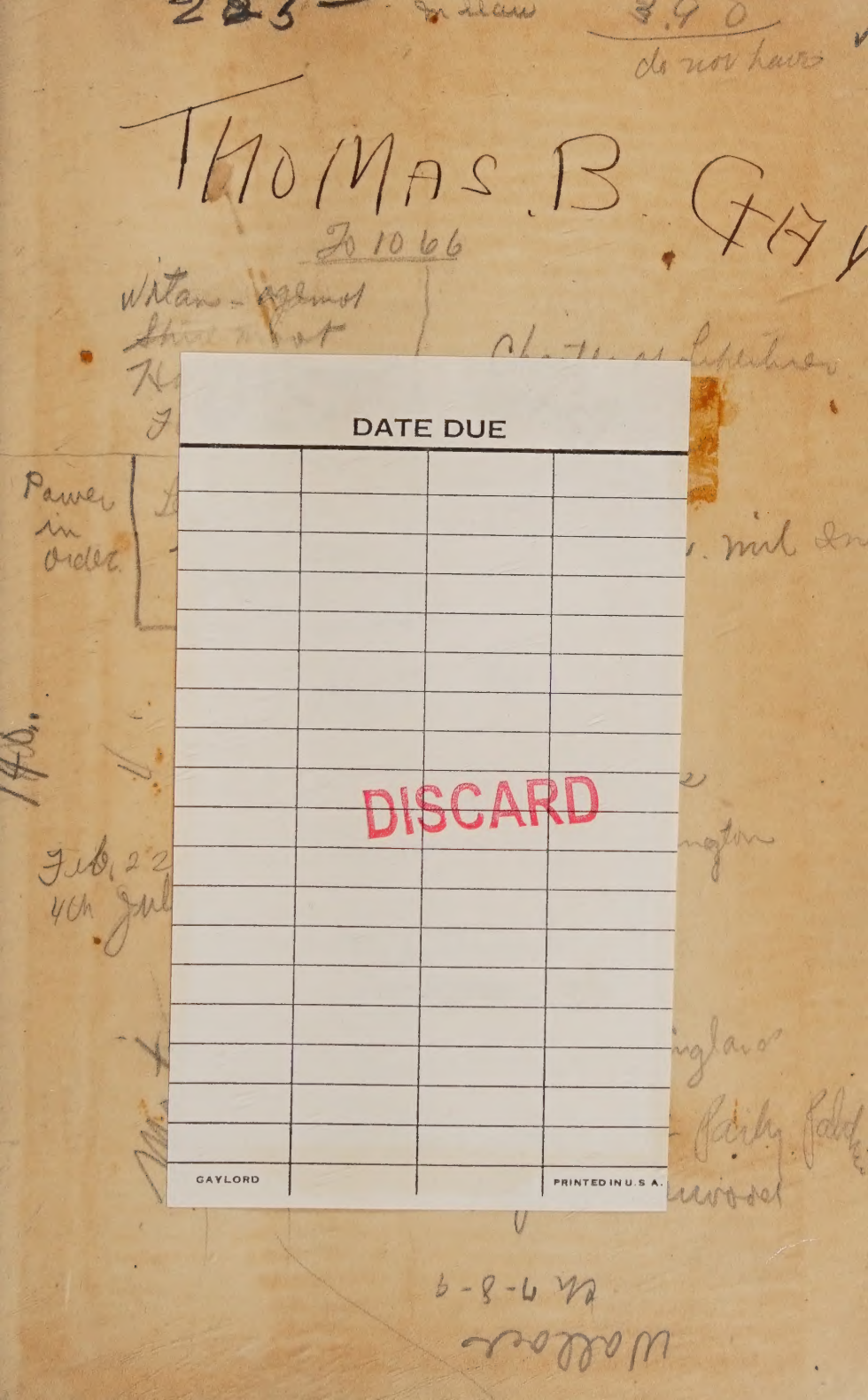
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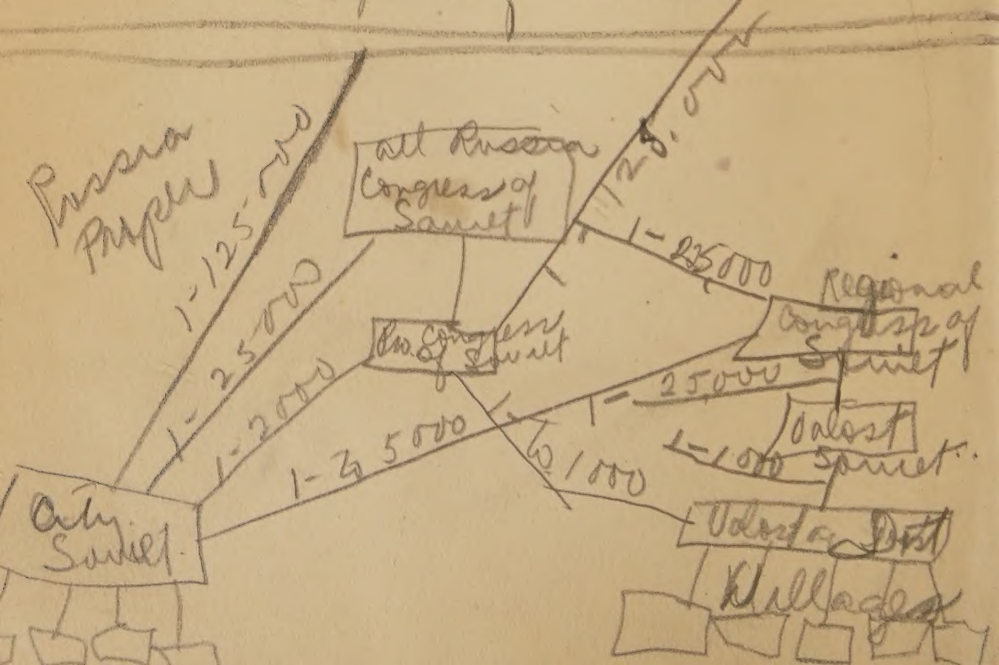

THE GOVERNMENTS OF EUROPE

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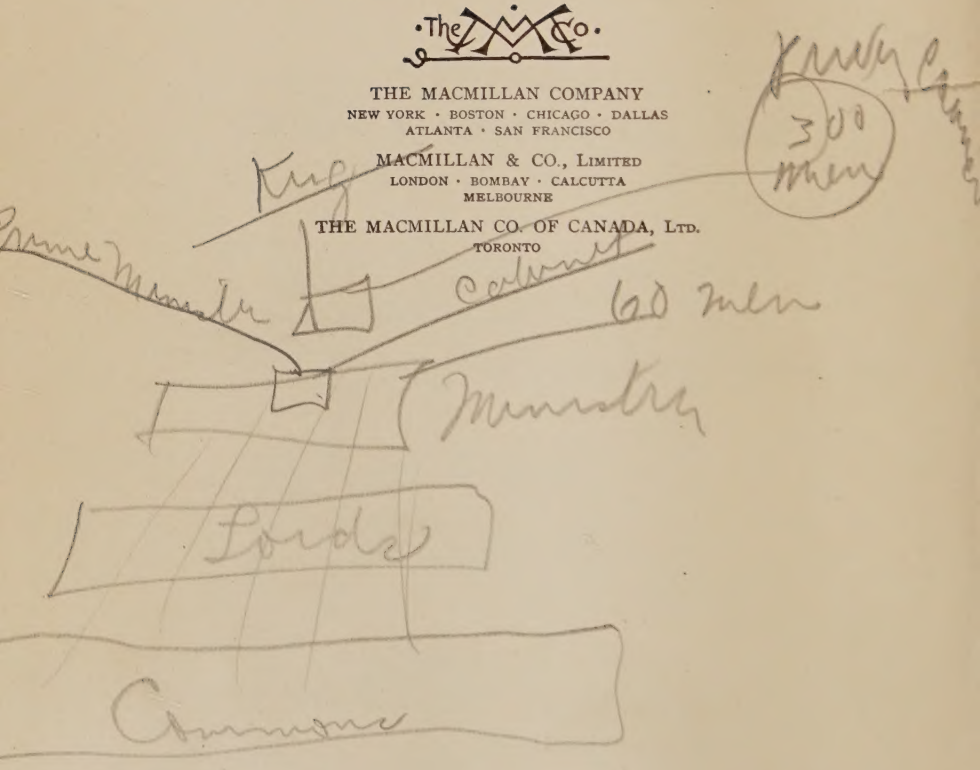

THE GOVERNMENTS OF EUROPE

BY

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To

MY FATHER

PREFACE

The first edition of this book was published in 1913. At that time I wrote: "It is a matter of common observation that during the opening years of the twentieth century there has been, in many portions of the civilized world, a substantial quickening of interest in the principles and problems of human government. The United States is happily among those countries in which this development has taken place, and we have seen in recent times not only the organization of societies and the establishment of journals designed to foster research within the field, but also a remarkable multiplication and strengthening of courses in political science offered to students in our colleges and universities, as well as the establishment of clubs, forums, extension courses, and other facilities for increasing political information and stimulating political thinking on the part of the people at large." The book aimed to promote the intelligent study of government, on comparative lines, by supplying working descriptions of the governments and parties of both the larger and smaller states of western and central Europe.

Since 1913 the structure, functions, and problems of government have undergone important changes in every European state; in Germany, Russia, and the former Dual Monarchy, Austria-Hungary, reconstruction has sprung from overt revolution. The volume has accordingly been rewritten throughout, not only with a view to better adaptation of contents and proportions to text-book use, but in order to take due account of the far-reaching developments of the war period. It is hardly necessary to say that many European governmental systems are still in an exceptionally fluid state, and that party alignments, notably in Great Britain, Germany, and Russia, are unusually unstable. There is, however, no such thing as fixity or finality in politics; the uncertainties that surround the European political situation to-day differ, after all, only in degree from those with which the student has always to reckon. Furthermore, study of the principles and methods of government is never so profitable as when great political changes are taking place before one's eyes.

The general plan of the present volume differs from that of the first edition. A number of chapters dealing with the governments of minor states have been omitted. Chapters devoted to Austria-Hungary have likewise been dropped, and no attempt has been made to cover the governments of the several lesser states which have risen from the wreckage of the former Habsburg dominion. On the other hand, the space allotted to Great Britain is almost doubled, that given to France is practically tripled, and a closing chapter undertakes to set forth the salient features of soviet government in Russia. Italy continues to be treated somewhat briefly, because of the general similarity of the Italian and French political systems. Switzerland is dealt with substantially as before. In the case of Germany I have decided to retain chapters describing the governments and parties both of the Empire and of Prussia up to 1918, partly because every student of comparative government ought to be familiar with the former German system, and partly because more of the old system than is commonly supposed survives in the new. I have, however, added two chapters which are designed to outline German political development during the Great War and to describe the republican institutions set up in 1918. In this portion of the book I have drawn freely upon chapters which appeared in a volume prepared in collaboration with Dr. Charles A. Beard and published in 1918 under the title "National Governments and the World War."

FREDERIC AUSTIN OGG

MADISON, WISCONSIN,
August 10, 1920.

CONTENTS

PART I. GOVERNMENT AND POLITICS OF GREAT BRITAIN AND IRELAND

CHAPTER		PAGE
I.	Foundations of the Constitution	1
II.	The Constitution in Reconstruction, 1485–1689	17
III.	Constitutional Development since the Seventeenth Century	34
IV.	The Constitution and the Government	46
V.	The Crown	58
VI.	The Ministers and the Administrative System	73
VII.	The Cabinet	93
VIII.	Parliament: the House of Commons	112
IX.	Parliament: the House of Lords	140
X.	Parliamentary Organization	163
XI.	Parliamentary Functions and Procedure: the Cabinet System	176
XII.	Law and Justice	206
XIII.	Local Government	220
XIV.	Political Parties since the Eighteenth Century	238
XV.	The Major Parties: Composition and Organization	261
XVI.	Minor Parties: Labor in Politics and Irish Home Rule	276
XVII.	Miscellaneous Party Issues	296
XVIII.	Party Politics since 1914	313
XIX.	Greater Britain: the Self-governing Colonies	336

PART II. GOVERNMENTS AND POLITICS OF CONTINENTAL STATES

1. *France*

XX.	The Rise of Constitutional Government	357
XXI.	The Constitution of the Third Republic	374

CHAPTER PAGE

XXII. The President and the Ministers 387
XXIII. The Structure of Parliament 407
XXIV. The Parliamentary System. 428
XXV. Law and Justice 448
XXVI. Local Government and Administration . . . 465
XXVII. Political Parties 484

2. *Italy*

XXVIII. Constitutional Development in the Nineteenth Century 504
XXIX. The Governmental System 520
XXX. Parties and Politics 540

3. *Switzerland*

XXXI. The Constitutional System 554
XXXII. Government in the Cantons 574
XXXIII. The Federal Government 587

4. *Germany*

XXXIV. The Hohenzollern Empire and Its Constitution . 608
XXXV. The Imperial German Government 628
XXXVI. The Prussian Government before the Great War . 654
XXXVII. Political Forces and Party Alignments to 1914 . 675
XXXVIII. The War-Time Movement for Political Reform and the Revolution of 1918 703
XXXIX. The Republican Constitution 717

5. *Russia*

XL. The Soviet Republic and its Government . . 737

INDEX 755

THE GOVERNMENTS OF EUROPE

3-rd - Ch -6-7

4 - 8

5 - 10-11

6 - 12-13

7 - 14-15-16

8 - 17-18-19

9 - 20-21-22-23

10 - 24-25-26-27

11 - 28-29-30

12 - 31-32-33

13 - 34-35-36

14 - 37-38-39

15 - 40. Russia

16 -

GOVERNMENTS OF EUROPE

PART I

GOVERNMENT AND POLITICS OF GREAT BRITAIN AND IRELAND

CHAPTER I

FOUNDATIONS OF THE CONSTITUTION

England's Political Importance. — "England," says a modern historian, "has taken the lead in solving the problem of constitutional government; of government, that is, with authority, but limited by law, controlled by opinion, and respecting personal right and freedom. This she has done for the world, and herein lies the world's chief interest in her history." [1] In entering upon a study of the governmental systems of contemporary Europe it is natural, therefore, to begin with England — with the nation that has achieved as great distinction in the practice and diffusion of political democracy as did the Hebrews in religion, the Greeks in sculpture and architecture, and the Romans in law and war. Nowhere else can one observe a political development so orderly, continuous, and prolonged. The governmental forms and methods of no other state have been studied with greater interest or copied with better results. The public policy of no other organized body of men has been more influential in shaping the progress, social and economic as well as political, of the civilized world.

For the American student, furthermore, the approach to the governments of the European continent is likely to be made easier and more inviting by acquaintance with a system of political institutions which lies at the root of much that is both American and continental. There are, it is true, not a few respects in which the governmental system of the United States

[1] Goldwin Smith, *The United Kingdom* (New York, 1899), I, 1.

to-day bears closer resemblance to that of France, Germany, or Switzerland than to that of England. The relation, however, between the English and the American is one, in the main, of common origin and tradition, while that between the French or Swiss and the American is one arising principally from mere imitation or from accidental resemblance. "The history of the formation of the British constitution," says an American scholar, "is a part of our own history. . . . The creation and establishment of our judicial institutions and common law, of the supremacy of law over the government, of our representative system, of the popular control of taxation, of the responsibility of ministers of government to the legislature, and finally of the principle, fundamental to all else, of the sovereignty of the people, were the work of our English ancestors." [1]

It is the purpose of this book to describe European governments as they exist and operate to-day. No governmental system, however, can be understood without somewhat exact knowledge of the historical conditions and actions that produced it. Hence a certain amount of attention must be given throughout our study to the data of constitutional history. Especially is this necessary in the case of England; for although the governmental organization of that country has undergone many profound changes in the present generation, and particularly since the outbreak of the Great War, English political institutions are, none the less, still preëminently rooted in the past, some of them in periods removed from us by many hundreds of years.

Anglo-Saxon Foundations. — The first distinct epoch in the history of the English constitution is that of Anglo-Saxon settlement and rule, extending from the fifth century to the Norman invasion in 1066. This period contributed less to the constitution of to-day than was formerly believed; yet it originated certain institutions that were of prime importance in later times, chiefly kingship, the witenagemot, and the local government divisions of the shire, the hundred, the borough, and the township. The origins of Anglo-Saxon kingship are shrouded in obscurity, but they are known to belong to the period after the settlement; hence, monarchy in England is an indigenous, not an imported, institution. Apparently, the first kings were the chieftains of victorious war-bands; and many such chieftains attained the dignity. As political consolidation progressed,

[1] G. B. Adams, *Outline Sketch of English Constitutional History* (New Haven, 1918), 4–5.

earlier tribal kingdoms became administrative districts of larger kingdoms, and, eventually, in the ninth century, the whole of the occupied portion of the country was brought under the control of a single sovereign. Saxon kingship was elective, patriarchal, and of limited power. Kings were chosen by the important men sitting in council; and while the dignity was hereditary in a family presumed to be of divine origin, an immediate heir was likely to be passed over in favor of a relative who was remoter but abler. The king was primarily a war-leader. He was a lawgiver, but his "dooms" were framed only in consultation with the wise men, and they pertained to little else than the preservation of the peace. He was supreme judge, and all crimes and breaches of the peace came to be looked upon as offenses against him; but he held no court, and in reality he had little to do with the administration of justice. Over local affairs he had no direct control whatever.

Associated with the king was the council of wise men, or witenagemot. The composition of this body, being determined in the main by the will of the individual monarch, varied widely from time to time. The persons most likely to be summoned were the members of the royal family, the greater ecclesiastics, the king's gesiths or thegns, the ealdormen who administered the shires, other leading officers of state and of the household, and the principal men who held land directly of the king. No popularly elected representatives were included. As a rule, the witan was called together three or four times a year. Acting with the king, it made laws, levied taxes, negotiated treaties, appointed ealdormen and bishops, and occasionally heard cases not disposed of in the courts of the shire and hundred. It was the witan, furthermore, that elected the king; and since it could depose him, he was obliged to recognize a certain responsibility to it. "It has been a marked and important feature in our constitutional history," an English scholar points out, "that the king has never, in theory, acted in matters of state without the counsel and consent of a body of advisers." [1]

Aside from kingship, the most enduring of Anglo-Saxon political creations were the several units of local government. The smallest of these was the township, which consisted usually of a village surrounded by arable lands, meadows, and woodland. The town-moot was a primary assembly of the freemen of the village; and under the presidency of a reeve it administered the

[1] W. R. Anson, *Law and Custom of the Constitution* (3d ed., Oxford, 1907–11), II, Pt. 1, 7.

township's affairs. A variation of the township was the burgh, or borough, whose population was apt to be larger and whose political independence was greater; but its arrangements for government were similar to those of the ordinary township. A group of townships formed a hundred. At the head of the hundred was a hundred-man, ordinarily elected, but frequently appointed by a great landowner or prelate to whom the lands of the hundred belonged. Assisting the hundred-man was a council of twelve or more freemen. In the hundred-moot was introduced the principle of representation; for to the meetings of that body came the reeve, the parish priest, and four "best men" from each of the townships and boroughs included in the hundred. The hundred-moot met once a month, and it had as its principal function the adjudication of cases, whether civil, criminal, or ecclesiastical.

Above the hundred was the shire. Originally, as a rule, the shires were regions occupied by small but independent tribes; in time they became administrative districts of the United Kingdom. At the head of the shire was an ealdorman, appointed by the king and witan, usually from the prominent men of the shire. Subordinate to him at first, but in time overshadowing him, was the shire-reeve, or sheriff, who was essentially a representative of the crown, sent to assume charge of the royal lands in the shire, to collect the king's revenue, and to receive the king's share of the fines imposed in the courts. Each shire had its moot; and, the shires and bishoprics being usually co-terminous, the bishop sat with the ealdorman as joint president of this assemblage. In theory, at least, the shire-moot was a gathering of the freemen of the shire. It met, as a rule, twice a year, and all freemen were entitled to come to it, in person or by representation. Those who did not desire to attend were permitted to send as spokesmen their reeves or stewards; so that the body was likely to assume the character of a mixed primary and representative assembly. The shire-moot decided disputes over land, tried suits for which a hearing could not be obtained in the court of the hundred, and exercised an incidental ecclesiastical jurisdiction.[1]

[1] The classic description of Anglo-Saxon political institutions is W. Stubbs, *Constitutional History of England in its Origin and Development* (6th ed., Oxford, 1897), especially I, 74–182; but recent scholarship has supplemented and modified at many points the facts and views therein set forth. A useful account (although likewise subject to correction) is H. Taylor, *Origins and Growth of the English Constitution* (new ed., Boston, 1900), I, Bk. 1, Chaps. iii-v, and a repository of information is J. Ramsay, *Foundations of England*, 2 vols. (London, 1898). A valuable

Norman-Angevin Government. — The second, and a much more important, period in the building of the English constitution was the Norman-Angevin era, extending from the landing of William the Conqueror in 1066 to the death of King John in 1216. The aspect of this period which first arrests attention is the enormous growth of the king's power and the building up of a great centralized administrative system of which the king was the autocratic head. Monarchy in Anglo-Saxon days was weak. But the Norman conqueror was a powerful, aggressive, statesmanlike sovereign who with consummate skill maneuvered the results of his invasion in such a way as to make the king the real master of the country. Feudalism, land tenure, military service, taxation, the Church — all were bent to serve the interests of the crown. Within a generation England became a united, centralized monarchy of the most absolute type.

This was accomplished in part by the dissolution of great earldoms which menaced the monarchy in later Saxon days, and in part by an increase of the power and importance of the sheriffs. It was accomplished mainly, however, by the skillful organization of two great departments of government, *i.e.*, justice and finance, under dignitaries of the royal household, aided by permanent staffs of expert officials.[1] The department of justice comprised the Curia; that of finance, the Exchequer. At the head of the one was the Chancellor; at the head of the other, the Treasurer. The principal officials within the two formed a single body of men, sitting now as *justitiarii*, or justices, and now as *barones* of the Exchequer. The profits and costs of administering justice and the receipts and disbursements of the Exchequer were only different aspects of the same fundamental processes of state.[2] The justices of the Curia who held court on circuit throughout the realm and the sheriffs who came up twice a year to render to the barons of the Exchequer an account of the sums due from the shires served as the real and tangible agencies through which the central and local governments were

sketch is A. B. White, *Making of the English Constitution, 449–1485* (New York, 1908), 16–62. A brilliant book is E. A. Freeman, *Growth of the English Constitution* (4th ed., London, 1884), although it is to be used with caution because of the author's exaggerated estimate of the survival of Anglo-Saxon institutions in later times. Political and institutional history is fully narrated in T. Hodgkin, *History of England to the Norman Conquest* (London, 1906), and C. W. C. Oman, *England before the Norman Conquest* (London, 1910); and an admirable bibliography is C. Gross, *Sources and Literature of English History* (London, 1900).

[1] On the absorption of the administration of justice by the king's courts at the expense of feudal and other tribunals, see E. Jenks, *Government of the British Empire* (Boston, 1918), 9–12.

[2] Anson, *Law and Custom of the Constitution*, II, Pt. i, 11.

knit together. As will appear, it was from the Norman Curia that, in the course of time, sprang several of the departments of administration whose heads constitute the actual executive authority of the British nation to-day.

Untrammelled by constitutional restrictions, the Conqueror and his earlier successors recognized only such limitations on the royal authority as were imposed by powerful and turbulent subjects. Associated with the king, however, was from the first a body known as the Commune Concilium, the Common, or Great, Council. "Thrice a year," the Saxon Chronicle tells us, "King William wore his crown every year he was in England; at Easter he wore it at Winchester; at Pentecost, at Westminster; and at Christmas, at Gloucester; and at these times all the men of England were with him — archbishops, bishops and abbots, earls, thegns and knights." "All the men of England" means, of course, only the great ecclesiastics, the principal officers of state, and the king's tenants-in-chief — in truth, only such of the more important of these as were summoned individually to the sovereign's presence. At least in theory, however, the Norman kings were accustomed to consult this gathering of magnates, very much as their predecessors had consulted the witenagemot, upon all important questions of legislation, finance, and public policy. It may, indeed, be said that the development of this Council forms the central subject of English constitutional history; for, "out of it, directly or indirectly, by one process or another, have been evolved Parliament, the cabinet, and the courts of law." [1]

For a half-century after the death of the Conqueror (1087) the new system held up reasonably well, although rather because of the momentum that its founder had imparted to it than because of any contributions made by his successors of this period; indeed, the anarchy of the reign of Stephen (1135–54) almost wrecked the entire mechanism. Then came the astute and energetic Henry II (1154–89), who recovered all that had been lost and added not a little of his own account. "Henry II," it has been said, "found a nation wearied out with the miseries of anarchy, and the nation found in Henry II a king with a passion for administration." [2] With a view to bringing all of his subjects into obedience to a uniform system of law, the great Angevin sovereign waged steady warfare upon both the rebellious nobility and the independent clergy. He was not

[1] W. Wilson, *The State*, (rev. ed., Boston, 1918), 183.
[2] Anson, *Law and Custom of the Constitution*, II, Pt. i, 13.

entirely successful, especially in his conflict with the clergy; but he prevented a permanent reversion of the nation to feudal chaos, and he invested the king's law with a sanction hardly known in even the days of the Conqueror. The reign of Henry II has been declared, indeed, to "initiate the rule of law."[1] By reviving and placing upon a permanent basis the provincial visitations of the royal justices, for both judicial and fiscal purposes, and by extending in the local administration of justice and finance the principle of the jury, Henry contributed more perhaps than any other person to the development of the English common law, the jury, and the modern hierarchy of courts. By appointing as sheriffs lawyers or soldiers, rather than great barons, he fostered the influence of the central government in local affairs. By commuting military service for a money payment (*scutage*), and by reviving the ancient militia system (the *fyrd*), he brought the armed forces of the nation completely under royal control. By frequent summons of the Great Council, and by habitual presentation to it of leading questions of state, he added greatly to the importance of an institution from which Parliament itself was destined somewhat later to spring.

The Great Charter (1215). — In the hands of able kings like William the Conqueror and Henry II absolute power, although sometimes working injustice, was in general beneficent and bearable. But in the hands of weak or vicious rulers like Henry II's sons, Richard I and John, it soon became intolerable. Under John a long accumulation of grievances led the strong men of the country, the barons, into open rebellion; and on June 15, 1215, the king, finding himself without a party and facing the loss of his throne, granted the famous body of liberties known as the Great Charter. No document in the history of any nation is of larger importance than this Charter. The whole of English constitutional history, once remarked Bishop Stubbs, is but one long commentary upon it. The significance of the Charter arises not simply from the fact that it was wrested from an unwilling sovereign by concerted action of the various orders of society (action such as in France and other continental countries never, in medieval times, became possible), but principally from the remarkable summary which it furnishes of the fundamental principles of English government in so far as those principles had ripened by the thirteenth century. The Charter contained little that was new. Its authors sought merely to gather up within a reasonably brief document those principles

[1] Stubbs, *Select Charters*, 21.

and customs which the better kings of England had usually observed, but which in the evil days of Richard and John had been evaded or openly violated. There was no thought of a new form of government, or of a new code of laws, but rather of the redress of present and practical grievances. Not a new constitution, but good government in conformity with the old one, was the object. Naturally, therefore, the instrument was based, in most of its important provisions, upon a charter granted by Henry I in 1100, even as that instrument was based, in the main, upon the righteous laws of the Saxon king, Edward the Confessor. After like manner, the Charter of 1215 became, in its turn, the foundation to which reassertions of constitutional liberty in subsequent times were apt to return; and, under more or less pressure, the Charter itself was "confirmed" by several sovereigns who proved disinclined to observe its principles.

In effect, the Charter was a treaty between the king and his dissatisfied subjects. It was essentially a feudal document, and the majority of its provisions related primarily to the privileges and rights of the barons. None the less, it contained clauses that affected all classes of society, and it is noteworthy that the barons and clergy pledged themselves in it to extend to their dependents the same customs and liberties that they were themselves demanding of the crown. Taking the Charter as a whole, it guaranteed the freedom of the Church, defined afresh and in precise terms surviving feudal obligations and customs, placed safeguards about the liberties of the boroughs, pledged security of property and of trade, and laid down important regulations concerning government and law, notably that whenever the king should propose the assessment of "scutages" or of unusual financial "aids," he should take the advice of the General Council, composed of the tenants-in-chief, summoned individually in the case of the greater ones and through the sheriffs in the case of those of lesser importance. Certain general clauses, *e.g.*, one pledging that justice should neither be bought nor sold, and another prescribing that a freeman should not be imprisoned, outlawed, or dispossessed of his property save by the judgment of his peers [1] or by the law of the land, undertook to guarantee impartial and unvarying justice; while running through the entire instrument was the idea of limitation upon autocratic power — not, indeed, a twentieth-century notion of constitu-

[1] The term "peers," as here employed, means only equals in rank. The clause does not imply trial by jury. It is simply a guarantee that the barons should not be judged by persons of feudal rank inferior to their own. Jury trial was becoming common in the thirteenth century, but it was not guaranteed in the Great Charter.

tional monarchy, but at least a clear conception of the obligation of the king as a feudal magnate to keep within the bounds of his feudal contracts. "What the Great Charter did," says an American scholar, "was to lay down two fundamental principles which lie at the present day, as clearly as in 1215, at the foundation of the English constitution and of all constitutions derived from it. First that there exist in the state certain laws so necessarily at the basis of the political organization of the time that the king, or as we should say to-day the government, must obey them; and second that, if the government refuses to obey these laws, the nation has the right to force it to do so, even to the point of overthrowing the government and putting another in its place. . . . In every age of English history in which the question has risen, in every crisis in the development of English liberty, this double principle is that upon which our ancestors stood and upon which, as a foundation, they built up little by little the fabric of free government under which we live."[1]

The Rise of Parliament. — The age-long contest between royal absolutism and the forces in one way or another representing the nation at large — between the ruler and the ruled — was thus clearly begun. It was destined to go on for many centuries, to become, indeed, the central thread in the country's constitu-

[1] Adams, *Outline Sketch of English Constitutional History*, 45–47. Substantial accounts of the institutional aspects of the Norman-Angevin period are Stubbs, *Constitutional History*, I, 315–682, II, 1–164; Taylor, *Origin and Growth of the English Constitution*, I, Bk. 2, Chaps. ii–iii; and Adams, *Origin of the English Constitution*, Chaps. i–iv. An excellent brief survey is C. H. Haskins, *The Normans in European History* (Boston, 1915), Chap. iii. Two useful little books are Stubbs, *Early Plantagenets* (London, 1876) and Mrs. J. R. Green, *Henry VI* (London, 1892). General narratives will be found in T. F. Tout, *History of England from the Accession of Henry III to the Death of Edward III*, 1216–1377 (London, 1905), and H. W. C. Davis, *England under the Normans and the Angevins* (London, 1904). A monumental treatise, though subject to a considerable amount of correction, is E. A. Freeman, *History of the Norman Conquest*, 6 vols. (Oxford, 1867–69), and a useful sketch is Freeman, *Short History of the Norman Conquest* (2d ed., Oxford, 1901). Among extended and more technical works may be mentioned: F. Pollock and F. W. Maitland, *History of English Law*, 2 vols. (2d ed., Cambridge, 1898), which, as a study of legal history and doctrines, supersedes all earlier works; F. W. Maitland, *Domesday Book and Beyond* (Cambridge, 1897); J. H. Round, *Feudal England* (London, 1895); K. Norgate, *England under the Angevin Kings*, 2 vols. (London, 1887); *ibid.*, *John Lackland* (London, 1902); and J. H. Ramsay, *The Angevin Empire* (London, 1903). The text of the Great Charter is printed in Stubbs, *Select Charters*, 296–306. English versions will be found in G. B. Adams and H. M. Stephens, *Select Documents of English Constitutional History* (New York, 1908), 42–52, and Univ. of Pa. *Translations and Reprints* (translation by E. P. Cheyney), I, No. 6. The principal special work on the subject is W. S. McKechnie, *Magna Carta; a Commentary on the Great Charter of King John* (Glasgow, 1905). An illuminating exposition is contained in Adams, *Origin of the English Constitution*, 297–313, and H. E. Malden (ed.), *Magna Carta Commemoration Essays* (London, 1917), is of interest.

tional history, and to end only when the people had fully established their right to be in all respects their own master. In this tremendous conflict the leading rôle on the side of the people was played by a great institution which did not yet exist in the days of King John, namely, Parliament. The formative period in the history of Parliament was the second half of the reign of Henry III (1216–72), together with the reign of the legislator-king Edward I (1272–1307). The creation of Parliament as we know it came about through the enlargement of the essentially feudal Great Council of Norman times by the introduction of representatives of classes in the community which in feudal days had no standing there, chiefly the merchants and the small landowners; this being followed by the separation of the heterogeneous mass of members into two coördinate chambers. The representative principle was no new thing in the thirteenth century. There were important manifestations of it in the local government of Anglo-Saxon times. As brought to bear in the development of Parliament, however, the principle is generally understood to have sprung from the twelfth-century practice of electing assessors to fix the value of real and personal property for purposes of taxation, and jurors to present criminal matters before the king's justices.[1] By the opening of the thirteenth century the idea was fast taking hold, not only that the taxpayer ought to have a voice in the levying of taxes, but that between representation and taxation there was a certain natural and inevitable connection. The Great Charter, as has been stated, stipulated that in the assessment of scutages and of all save the three commonly recognized feudal aids the king should seek the advice of the General Council. The Council of the early thirteenth century was not a representative body, but it was capable of being made such; and that is precisely what happened. To facilitate taxation it was found expedient by the central authorities to carry over into the domain of national affairs that principle of popular representation which already was doing good service in the sphere of local justice and finance; and from this adaptation resulted the conversion, step by step, of the old gathering of feudal magnates into a national parliamentary assembly.

The first step in this direction was taken in 1213, when King John, harassed by fiscal and political difficulties, addressed

[1] Thus, Henry II's Saladin tithe of 1188 — the first national imposition upon incomes and movable property — was assessed, at least in part, by juries of neighbors elected by, and in a sense representative of, the taxpayers of the various parishes.

writs to the sheriffs commanding that four "discreet knights" from every county be sent to a council to be held at Oxford. In 1254 Henry III, needing money for his wars in Gascony, required of the sheriffs that two knights be sent from each county to confer with the barons and clergy upon the subsidies to be granted the crown. The desired vote of supplies was refused and the long-brewing contest between the king and the barons broke in civil war. But during the struggle the foundations of Parliament were still more securely laid. Following the king's defeat at Lewes, in 1264, Simon de Montfort, leader of the barons, convened a parliament composed of not only barons and clergy but also four knights from each shire; and at London, during the following year, he caused again to be assembled, in addition to five earls, eighteen barons, and a large body of clergy, two knights from each of the several shires and two burgesses from each of twenty-one towns known to be friendly to the barons' cause. These proceedings were unauthorized, and indeed revolutionary. Even the gathering of 1265, as Stubbs remarks, had the appearance of a party convention, and there is no evidence that its author intended such a body to be regularly or frequently summoned, or even summoned a second time at all. None the less, now for the first time representatives of the towns were brought into political coöperation with the barons, clergy, and knights; and the circumstance was filled with promise. During the next thirty years there were several "parliaments," although the extent to which knights and burgesses participated in them is uncertain. The period was one of experimentation. In 1273 four knights from each shire and four citizens from each town joined the magnates in taking the oath of fealty to the new and absent sovereign, Edward I. The first Statute of Westminster, in 1275, declares itself to have been adopted with the assent of the "commonalty of the realm." In 1283 a parliament was held which practically duplicated that of 1265. In 1290, and again in 1294, there was a similar gathering, in which, however, representation of the towns was omitted.

The meeting which in a general way fixed the type for all time to come was Edward I's "Model Parliament" of 1295 To this gathering the king summoned severally the two archbishops, all of the bishops, the greater abbots, and the more important earls and barons; while every sheriff was enjoined to see that two knights were chosen from each shire, two citizens from each city, and two burgesses from each borough. Each bishop was

authorized, furthermore, to bring with him his prior or the dean of the cathedral chapter, the archdeacons of his diocese, one proctor or agent for his cathedral chapter, and two of his diocesan clergy. In the parliament as actually convened there were 2 archbishops, 18 bishops with their lesser clergy, 66 abbots, 3 heads of religious orders, 9 earls, 41 barons, 63 knights of the shire, and 172 representatives of the cities and boroughs — an aggregate of approximately 400 persons. There were thus brought together, in person or by deputy, all of the leading classes or orders of which English society was composed, *i.e.*, nobility, clergy, and commons. From this time forth, Parliament may be said to have been an established institution.

In 1295, and for a long time after, the three estates sat and transacted business separately; and it appeared that, like the Estates General in France, Parliament would permanently consist of three houses, which would mean that the nobles and clergy would always, as in France, be in a position to outvote the commons. Gradually, however, practical interests led to a different arrangement. The lesser clergy, inconvenienced by attendance and preferring to vote their contributions in the special ecclesiastical assemblages known as the convocations of Canterbury and York, contrived to throw off their obligation of membership. The greater clergy and the greater barons, in the next place, developed sufficient interests in common to be amalgamated with ease in one body. Similarly, the lesser barons found their interests essentially identical with those of the country freeholders, represented by the knights of the shire, and with those of the burgesses. The upshot was a gradual re-alignment of the membership in two great groups, of which one became the House of Lords, the other the House of Commons. The upper chamber practically perpetuated the Great Council of feudal times; the lower was composed mainly of the new elements representing the non-feudal classes. By the close of the reign of Edward III (1377) this bicameral, or two-house, organization seems to have been complete. It arose, not from any definite opinion that two houses were better than one or than three, nor from any clear plan or purpose, but rather by accident, *i.e.*, because the Church, which, according to continental analogy, should have formed a third house, chose to remain outside.[1] The whole course of English history since the

[1] Adams, *Outline Sketch of English Constitutional History*, 63. The beginnings of the House of Commons are discussed in a scholarly manner in D. Pasquet, *Essai sur les origines de la Chambre des Communes* (Paris, 1914).

fourteenth century, however, has been profoundly affected by the fact that the national assembly thus took the form of two houses rather than of one, as did the Scottish, of three as did the French, or of four as did the Swedish.

Growth of the Powers of Parliament. — In the fourteenth and fifteenth centuries Parliament steadily gained in power. Its meetings were irregular and infrequent. But in the all-important domains of finance and legislation it asserted and maintained authority equaling, and at times transcending, that of the king. In finance it forced recognition of the twin principles (1) that the right to levy taxes of every sort lay within its hands, and (2) that the crown should impose no direct tax without its assent, nor any indirect tax save such as could be justified under the customs recognized in Magna Carta. In 1395 appeared the formula employed to this day in the making of parliamentary grants, "by the Commons with the advice and assent of the Lords Spiritual and Temporal"; and in 1407 Henry IV gave formal assent to the principle that money grants should be initiated in the Commons, agreed to by the Lords, and only thereafter reported to the king. Likewise legislation. Originally, Parliament was not conceived of as a law-making body at all. The magnates who composed the General Council exercised the right to advise the crown in legislative matters, and their successors in Parliament continued to do the same; but the commoners who were brought in in the thirteenth century were present for fiscal, rather than legislative, purposes. The distinction, however, was difficult to keep up, and with the continued growth of the parliamentary body the legislative function was eventually recognized as belonging to the whole of it.

At the opening of the fourteenth century laws were made, technically, *by* the king with the *assent* of the magnates at the *request* of the commoners. The knights and burgesses were recognized as petitioners for laws, rather than as legislators. They could ask for a new statute, or for a clearer definition of law, but it was for the king and his councilors to decide whether legislation was required and what form it should assume. Even when a measure that was asked for was promised, the intent of the Commons was often frustrated; for as a rule the instrument was not drawn up until after the parliament was dissolved, when, in point of fact, both form and content were determined more or less arbitrarily by the crown and council. A memorable statute of 1322, in the reign of Edward II, stipulated that "the matters which are to be established for the estate of our lord the

king and of his heirs, and for the estate of the realm and of the people, shall be treated, accorded, and established in parliaments, by our lord the king, and by the assent of the prelates, earls, and barons, and the commonalty of the realm; according as it hath been before accustomed." [1] This declaration is understood to have established, not only the essentially legislative character of Parliament, but the legislative parity of the commoners with the magnates. It remained, however, to substitute for the right of petition the right of legislating by bill. Throughout the fourteenth century Parliament, and especially the Commons, pressed for an explicit recognition of the principle that the statute in its final form should be identical with the petition upon which it was based. In 1414 Henry V granted that "from henceforth nothing be enacted to the petitions of his commons that be contrary to their asking, whereby they should be bound without their assent." [2] This rule, however, was frequently violated; and late in the reign of Henry VI (1422–61) a change of procedure was brought about under which measures were henceforth to be introduced in either house in the form of drafted bills. Statutes now began to be made "by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same;" and every act of Parliament begins with these words today unless passed under the terms of the Parliament Act of 1911, in which case mention of the Lords is omitted. Once merely a petitioning and advising body, Parliament had become a full-fledged legislative assemblage.[3]

The Permanent Council and the Courts of Law.— This transformation of the Norman Great Council into the semi-

[1] Adams and Stephens, *Select Documents*, 97.

[2] *Ibid.*, 182.

[3] On the rise of Parliament see Stubbs, *Constitutional History of England*, II, Chaps. xv, xvii; Taylor, *Origins and Growth of the English Constitution*, I, 428–616; G. B. Smith, *History of the English Parliament* (London, 1892), I, Bks. 2–4; White, *Making of the English Constitution*, 298–401; D. J. Medley, *Students' Manual of English Constitutional History* (2d ed., Oxford, 1898), 127–150; Tout, *History of England from the Accession of Henry III to the Death of Edward III*, Chaps. v, vi, x. Valuable biographical treatises are G. W. Prothero, *Life of Simon de Montfort* (London, 1877); E. Jenks, *Edward Plantagenet* [Edward I], *the English Justinian* (New York, 1902); and T. F. Tout, *Edward the First* (London, 1906). The growth of parliamentary powers in the fourteenth and fifteenth centuries is briefly but adequately described in Adams, *Outline Sketch of English Constitutional History*, Chap. iii. The development of financial powers to 1689 is traced in S. A. Morgan, *History of Parliamentary Taxation in England* (New York, 1911). See also A. B. White, "Was there a 'Common Council' before Parliament?" in *Amer. Hist. Rev.*, Oct., 1919.

King in Council; and there are still, as will be pointed out, certain survivals of the judicial prerogative which the Council as a whole thus retained. By the time of Henry VI the enlargement of membership and the specialization of functions of the Permanent Council had gone so far that this group, too, had entirely ceased to be a working body. Ultimately, what happened was that, precisely as the Permanent Council had been derived by selection from the original Great Council, so from the overgrown Permanent Council was segregated, in the fifteenth century, a smaller and more compact administrative body known to historians as the "Privy Council."[1] By curious repetition, when, in the seventeenth and eighteenth centuries, this Privy Council became too large for practical use, an inner circle was, in turn, detached from it and, under the name of the Cabinet, was put in the way of becoming the working executive of the realm.[2]

[1] See Stubbs, *Constitutional History*, II, Chap. xiii; White, *Making of the English Constitution*, 123–251; Adams, *Origin of the English Constitution*, 136–143; W. S. Holdsworth, *History of English Law* (London, 1903–09), I, 1–100; J. F. Baldwin, *The King's Council in England during the Middle Ages* (New York, 1913); A. P. Poley, "Development of the Privy Council," in *Britan. Rev.*, Jan., 1916.

[2] See p. 93.

CHAPTER II

THE CONSTITUTION IN RECONSTRUCTION, 1485–1689

The Tudor Monarchy. — The salient fact of the Tudor period of English history (1485–1603) is the vigor and dominance of the monarchy. From the long and dreary Wars of the Roses the nation emerged in need, above all else, of discipline and repose. It was the part of the Tudors relentlessly to enforce the one and systematically to foster the other. The period was one in which aristocratic turbulence was repressed, extraordinary tribunals were erected to bring to justice powerful offenders, vagrancy was punished, labor was found for the unemployed, trade was stimulated, the navy was organized on a permanent basis, the diffusion of wealth and of education was encouraged, the growth of a strong middle class was promoted — in short, one in which out of chaos was brought order and out of weakness strength. These things were the work of a government which was frankly paternal, even boldly despotic, and for a time the evolution of parliamentary institutions was arrested. But it should be observed that the question in sixteenth-century England was not between strong monarchy on the one hand and parliamentary government on the other. The alternatives were, rather, strong monarchy and baronial anarchy. This the nation clearly perceived, and, of the two, it preferred the former.

"The Tudor monarchy," says an English scholar, "unlike most other despotisms, did not depend on gold or force, on the possession of vast estates, unlimited taxation, or a standing army. It rested on the willing support of the nation at large, a support due to the deeply rooted conviction that a strong executive was necessary to the national unity, and that, in the face of the dangers which threatened the country both at home and abroad, the sovereign must be allowed a free hand. It was this conviction, instinctively felt rather than definitely realized, which enabled Henry VIII not only to crush open rebellion but to punish the slightest signs of opposition to his will, to regulate the consciences of his subjects, and to extend the legal conception

of treason to limits hitherto unknown. It was this which rendered it possible for the ministers of Edward VI to impose a Protestant régime upon a Romanist majority, and allowed Mary to enter upon a hateful marriage and to drag the country into a disastrous war. It was this, finally, which enabled Elizabeth to choose her own line in domestic and foreign policy, to defer for thirty years the war with Spain, and to resist, almost single-handed, the pressure for further ecclesiastical change. The Tudor monarchy was essentially a national monarchy. It was popular with the multitude, and it was actively supported by the influential classes, the nobility, the gentry, the lawyers, the merchants, who sat as members of Parliament at Westminster, mustered the forces of the shire as Lords-Lieutenant, or bore the burden of local government as borough magistrates and justices of the peace." [1]

Government by Council. — The times of the Tudors and of the early Stuarts have been aptly designated the period of "government by council." Parliament continued to exercise a certain control over legislation and taxation, but it was in and through the Privy Council, together with certain subordinate councils, that the absolute monarchy in the main performed its work. The Privy Council — or simply "the Council" — ordinarily included seventeen or eighteen persons, although under Henry VIII its membership approached forty. The councilors were usually members of Parliament, and this made easier the control of the proceedings of that body by the government, without as yet involving any admitted responsibility of the executive to the legislative branch. After Mary's reign the councilors were, with few exceptions, laymen. Technically, the function of the Council was only to give advice. But in practice, even those sovereigns, notably Henry VIII and Elizabeth, who were most vigilant and industrious, were obliged to allow the councilors large discretion in the conduct of public business, and under the early Stuarts the Council practically ruled the realm. It supervised administration, regulated trade, granted licenses, controlled the press, kept an eye on the law courts, ferreted out plots, suppressed rebellion, controlled the movements of the fleet, assisted in the management of ecclesiastical affairs, and, in short, discussed, and took action on, substantially all concerns of state. Its right to issue ordinances in the name of the crown made it practically a legislative body; through regu-

[1] G. W. Prothero, *Select Statutes and other Constitutional Documents Illustrative of the Reigns of Elizabeth and James I* (Oxford, 1898), xvii–xviii.

lation of trade, management of loans and "benevolences," and definition of military obligations, it wielded large control over taxation; sitting with the king, it was a high court, whose jurisdiction, partly original and partly appellate, was extensive and peculiarly despotic.[1]

In 1487 Parliament authorized Henry VII to create a special tribunal, consisting at the outset of seven great officials and members of the Council, including two judges, to take cognizance of cases involving breaches of the law by offenders who were too powerful to be reached through the ordinary courts. This was the tribunal subsequently known, from its meeting-place, as the Court of Star Chamber. In effect it was from the beginning a committee of the Privy Council, empowered to exercise a jurisdiction which in truth had long been exercised extra-legally by the Council as a whole. The relation of the two institutions became steadily closer, and by the middle of the sixteenth century the Star Chamber was enlarged to include all of the members of the Council, together with the two chief justices; and since the Star Chamber was endowed with a statutory sanction which the Council lacked, the judicial business of the older body was regularly dispatched by its members sitting in the guise of the newer one. The tendency of the Tudor régime toward the conciliar type of government was farther manifested by the creation of numerous subsidiary councils and courts whose history cannot be recounted here. The best known of them was the Elizabethan Court of High Commission.[2]

Parliamentary Control Evaded. — In the eyes of the Tudor monarchs, especially Henry VIII and Elizabeth, Parliament was a tool to be used by the crown rather than an independent, coördinate power in the state. When more or less unpopular changes were to be carried through, such as the breach with the papacy under Henry VIII, it was Tudor policy to have them made in the guise of parliamentary enactments, to the end that they might be given the appearance and sanction of great national measures; and when larger supplies of money were to be obtained it was recognized to be good policy to make them, in similar manner, seem to be the voluntary gifts of the people. It was no

[1] Prothero, *Statutes and Constitutional Documents*, cii. See A. V. Dicey, *The Privy Council* (London, 1887), and E. Percy, *The Privy Council under the Tudors* (Oxford, 1907).

[2] A. T. Carter, *Outlines of English Legal History* (London, 1899), Chap. xii; A. Todd, *Parliamentary Government in England*, ed. by S. Walpole (London, 1892), I, Chap. ii; Dicey, *Privy Council*, 94–115.

part of the Tudor plan, however, that Parliament should be permitted to initiate measures or even to exercise any actual discretion in the adoption, amendment, or rejection of proposals submitted by the kings; and the means employed to keep the body in a purely subordinate position were many and ingenious. One was the practice of convening the houses irregularly and infrequently, and of restricting their sessions to very brief periods. Another was tampering with the freedom of county and borough elections. A third was directing, in the most dictatorial manner, the organization and proceedings of the chambers. Henry VIII bullied his parliaments shamelessly; Elizabeth, by cajolery, flattery, deceit, and other arts of which she was mistress, attained, through less boisterous methods, the same general end. Measures were thrust upon the chambers with peremptory demand for their enactment; projects originated by private members were stifled; and the privileges of free speech, immunity from arrest, and access to the sovereign were arbitrarily suspended or otherwise flagrantly violated.

Finally, there were well-known and oft-used devices by which the crown could entirely evade the limitations theoretically imposed by parliamentary authority. One of these was "proclamations." In the sixteenth century it was generally maintained in royal circles that the sovereign, acting alone or with the advice of the Council, could issue proclamations with the full force of law and affecting the most sacred liberties of the people so long as such edicts did not violate statute or common law. As a corollary, it was equally maintained that the crown could suspend or dispense with the laws in individual cases and at times of crisis. The range covered by these prerogatives was broad and undefined, and in the hands of an aggressive monarch they constituted a serious invasion of the powers of legislation nominally vested in Parliament. Still another aid to escape from parliamentary control was the relative independence of the king financially, arising from the numerous sources of revenue over which Parliament had as yet no control, and also from the fact that the customs duties and other indirect taxes were still voted at the accession of a sovereign for the whole of the reign.

Parliament in 1485. — Notwithstanding these facts, Parliament in the Tudor period by no means stood still. The spirit of independence and the evidences of power displayed by the chambers, especially the House of Commons, in the seventeenth century were the product of substantial, if more or less hidden, growth during the previous one hundred and fifty years. The

composition of the two houses at the accession of Henry VII was not clearly defined. The House of Lords was only a small body. It included simply those lords, temporal and spiritual, who were entitled to receive from the king, when a parliament was to be held, a special writ, *i.e.*, an individual summons. The number of these was indeterminate. The right of the archbishops, the bishops, and the abbots to be summoned was immemorial and indisputable, although the abbots usually evaded attendance, save in cases in which it could be shown that as military tenants of the crown they were obligated to perform parliamentary duty. The selection of individuals for summons among the lay nobility seems originally to have been dependent upon the royal pleasure. Eventually, however, the principle became fixed that a man once summoned must always be summoned, and that, furthermore, his eldest son after him must be summoned. What was at the outset a burdensome obligation became a privilege and a distinction, and by the time when it did so the rule was recognized that the king could not withhold a writ of summons from the heir of a person who had been once summoned and had obeyed the summons by taking his seat. During the fourteenth century the membership of the chamber fluctuated around 150. In the fifteenth century it was smaller; the temporal lords summoned to the first parliament of Henry VII numbered but 20.

The House of Commons at the beginning of the Tudor period was a body of some 300 members. It contained 74 knights of the shire, representing all but three of the forty English counties, together with a shifting quota of representatives of cities and boroughs. In the Model Parliament of 1295, 166 urban districts were represented; but as time went on the number declined, partly because fewer boroughs were invited to send representatives, and partly because when representation did not appear to yield tangible benefits the taxpayers, begrudging the two shillings a day paid their representatives, in some cases entirely abandoned the sending of members. At the opening of the fifteenth century, county members were elected by the body of freeholders present at the county court. But by statute of 1429 the electoral privilege was restricted to freeholders resident in the county and holding land of the yearly rental value of forty shillings, which was equivalent, perhaps, to £30 or £40 in present values. This rule, adopted originally with the express purpose of disfranchising "the very great and outrageous number of people either of small substance or of no value" who had been claiming electoral equality with the "worthy knights

and squires," was adhered to until 1832.[1] The electoral systems in the boroughs were utterly heterogeneous, and at no time before 1832 was a real effort made to bring them into uniformity. In some places (the so-called "scot and lot" boroughs) the suffrage was exercised by all rate-payers; in others, by the holders of particular tenements ("burgage" franchise); in others (the "potwalloper" boroughs), by all citizens who had hearths of their own; in still others, by the municipal corporation, or by the members of a gild, or even by neighboring landholders.

Parliamentary Development under the Tudors.—During the Tudor period the composition of the two chambers underwent important change. In the House of Lords the principal development was the substitution of temporal for spiritual preponderance. This was brought about in two ways: (1) the increase of the hereditary peers from thirty-six at the beginning of the reign of Henry VIII to about eighty at the accession of James I, and (2) the withdrawal of twenty-eight abbots, incident to the closing of the monasteries by Henry VIII, and only partially compensated by the creation at the time of six new bishoprics. In 1509 the number of lords spiritual was forty-eight; in 1603, it was only twenty-six.

Under the Tudors the membership of the House of Commons was practically doubled. The legislative union with Wales in 1535 brought in twenty-three new members. In 1536 and 1543 the counties of Monmouth and Chester were admitted to representation. Several boroughs were newly enfranchised, and by the end of the reign of Henry VIII representatives of counties had been increased from 74 to 90, and delegates of boroughs had been brought up to 252, giving the House an aggregate membership of 342. During the reign of Edward VI forty-eight new members were added; during that of Mary, twenty-one. But the most notable increase took place under Elizabeth, with the net result of bringing in 62 new borough representatives, in some cases from boroughs which now acquired the right of representation for the first time, in others from boroughs which once had possessed the right but had forfeited it through disuse. The total increase of the membership of the lower house during the Tudor period was 166. In some instances parliamentary representation was extended with the specific purpose of influencing the political complexion of the popular chamber. But, on the whole, the reason for this notable increase is to be

[1] See p. 120.

found in the growing prosperity of the country and in the habitual reliance of the Tudors upon the commercial and industrial classes of the population. This accounts especially for the increase of borough representation.

A second point at which Parliament underwent important change in the Tudor era was in respect to the frequency and duration of sessions.[1] Prior to Henry VIII, the life of a parliament was confined, as a rule, to a single session, and sessions were brief. But parliaments now ceased to be meetings to be broken up as soon as some specific piece of business had been completed, and many were brought together in several sessions. Henry VIII's Reformation Parliament lasted seven years. During the forty-five years of Elizabeth there were ten parliaments and thirteen sessions. One of these parliaments lasted eleven years, although it met but three times. It is true that the parliaments of Elizabeth were in session, in the aggregate, somewhat less than three years, an average for the reign of but little more than three weeks a year. But the point is that Parliament as an institution was gaining a recognized position in the political system of the nation. A book entitled *De Republica Anglorum; the Maner of Government or Policie of the Realme of England*, posthumously published, set forth in 1583 the legal supremacy of Parliament in words to whose clearness and accuracy nothing can be added to-day: "All that ever the people of Rome might do, either *Centuriatis Comitiis* or *Tributis*, the same may be done by the Parliament of England, which representeth and hath the whole power of the realm, both the head and body. For every Englishman is intended to be there present, either in person or by procuration and attorney, of what preëminence, state, dignity, or quality soever he be, from the prince (be he King or Queen) to the lowest person of England, and the consent of the Parliament is taken to be every man's consent."[2] There is no record that the enunciation of this doctrine, even by a court official, roused serious protest or difference of opinion. It was in the Tudor period, furthermore, that both houses started to keep journals, and that committees and numerous other features of modern parliamentary procedure had their beginnings.[3]

[1] See J. G. Randall, "Frequency and Duration of Parliaments," in *Amer. Polit. Sci. Rev.*, Nov., 1916.

[2] F. Pollock, *First Book of Jurisprudence* (London, 1896), 247. The author quoted is Sir Thomas Smith, a diplomat and court secretary, who died in 1577. There is a convenient edition of the book by L. Alston (Cambridge, 1906).

[3] Excellent works of a general nature on the Tudor period are H. A. L. Fisher, *History of England from the Accession of Henry VII to the Death of Henry VIII*

The Stuarts and the Divine Right of Kings. — In the period which included the reigns of the four kings of the Stuart dynasty (1603–88) the great issue of autocracy *versus* constitutional government came finally to a head. The doctrine upon which the Stuarts based their rule was the divine right of kings — a doctrine which James I himself, shortly before his accession, expounded and defended in a pedantic treatise entitled *The Treu Lawe of Free Monarchie*.[1] The sovereign, so ran the argument, rules by the will of God; his subjects have no recourse against him; if tyranny be a menace, anarchy is yet more to be feared; there is no appeal against tyranny save to God. "Monarchy," declared the same king in a speech before Parliament in 1610, "is the supremest thing upon earth. . . . As to dispute what God may do is blasphemy, . . . so is it sedition in subjects to dispute what a king may do in the height of his power."[2] Doctrine of this sort was by no means new in England. James' conception of the royal prerogative was essentially that which had been lodged in the mind of every Tudor, and of many an earlier monarch; he and his son, Charles I, expected to maintain the same measure of absolutism which Henry VIII and Elizabeth had maintained — nothing more, nothing less.

There were several reasons why such a purpose could not be realized. The first was the pig-headedness of the rulers themselves. Views which no Tudor would have been tactless enough to avow were proclaimed by the Stuarts from the housetops. The Stuart bluntness, lack of perception of the public will, and habit of insisting on the minutest definitions of prerogative would have alienated seventeenth-century Englishmen under even the most favorable circumstances. A second consideration is the fact, of which the nation was fully cognizant, that under

(London, 1906); A. F. Pollard, *History of England from the Accession of Edward VI to the Death of Elizabeth* (London, 1910); and A. D. Innis, *England under the Tudors* (London, 1905). For institutional history see Taylor, *English Constitution, II*, Bk. 4. More specialized treatment will be found in Smith, *History of the English Parliament*, I, Bk. 5; Dicey, *The Privy Council*, 76–130; and Taswell-Langmead, *English Constitutional History*, Chaps. x, xii. An excellent survey of English public law at the death of Henry VII is contained in F. W. Maitland, *Constitutional History of England* (Cambridge, 1909), 165–236. Books of large value on the period include W. Busch, *England under the Tudors*, trans. by A. M. Todd (London, 1895), the only volume of which published covers the reign of Henry VII; A. F. Pollard, *Henry VIII* (London, 1902), and *England under the Protector Somerset* (London, 1900); and M. Creighton, *Queen Elizabeth* (new ed., London, 1899).

[1] C. McIlwain, *Political Writings of James I* (Cambridge, 1919). See J. N. Figgis, *The Theory of the Divine Right of Kings* (Cambridge, 1896), and H. J. Laski, "The Political Ideas of James I," in *Polit. Sci. Quar.*, June, 1919.

[2] Prothero, *Statutes and Constitutional Documents*, 293–304.

the changed conditions that had arisen there was no longer any real need of strong monarchy. Law and order had long since been secured; all danger of a feudal reaction had been removed; foreign invasion was no more to be feared. Strong monarchy had served a good purpose, but that purpose had been fulfilled.

A third factor in the situation was the long obscured, but now obvious and rapid, growth of Parliament as an organ of the public will. In a remarkable document known as *The Apology of the Commons*, under date of June 20, 1604, the popular chamber stated respectfully but frankly to the new sovereign what it considered to be its rights and, through it, the rights of the nation. "What cause we your poor Commons have," runs the address, "to watch over our privileges, is manifest in itself to all men. The prerogatives of princes may easily, and do daily, grow; the privileges of the subject are for the most part at an everlasting stand. They may be by good providence and care preserved, but being once lost are not recovered but with much disquiet. The rights and liberties of the Commons of England consisteth chiefly in these three things: first, that the shires, cities, and boroughs of England, by representation to be present, have free choice of such persons as they shall put in trust to represent them; secondly, that the persons chosen, during the time of the Parliament, as also of their access and recess, be free from restraint, arrest, and imprisonment; thirdly, that in Parliament they may speak freely their consciences without check and controlment, doing the same with due reverence to the sovereign court of Parliament, that is, to your Majesty and both the Houses, who all in this case make but one politic body, whereof your Highness is the head." [1] The shrewdness of the political philosophy with which this passage opens is matched only by the terseness with which the fundamental rights of the Commons as a body are enumerated. Equally significant is a paragraph contained in a petition of the Commons, May 23, 1610, which reads as follows: "We hold it an ancient, general, and undoubted right of Parliament to debate freely all matters which do properly concern the subject and his right or state; which freedom of debate being once foreclosed, the essence of the liberty of Parliament is withal dissolved." [2]

Doctrines of the Parliamentary Party. — Finally, and most important, the Stuart doctrine ran counter to the whole con-

[1] Petyt, *Jus Parliamentarium* (London, 1739), 227–243. Portions of this document are printed in Prothero, *Statutes and Constitutional Documents*, 286–293.

[2] *Commons' Journals*, I, 431; Prothero, *Statutes and Constitutional Documents*, 297. See Maitland, *Constitutional History of England*, 240–245.

temporary tendency in the development of English political thought. The first principle that it violated was that the king, while subject to no man, was always subject to law. As early as the twelfth and thirteenth centuries two great legal writers, Glanvil and Bracton — both connected with the royal courts — flatly denied that the will of the monarch should have the force of law. Late in the fifteenth century Sir John Fortescue, in a treatise entitled *De Laudibus Legum Angliae* ("On the Excellence of the Laws of England"), although himself the titular chancellor of Henry VI, took as his main theme the advantages of a system of government, such as the English, under which the king can make law and lay taxes only with the consent of the three estates of the realm, and in which the judges are sworn to act according to the law of the land even though the king command to the contrary. In the Roman system, Fortescue points out, it is the will of the prince that makes law, while in the English the will of the prince is but a single and subordinate element. Although the despotism of Tudor days made this doctrine seem obsolete, it never died out, and in the reign of James I it was brought into fresh vigor by the great jurist Coke, who from the bench reënforced the rising claims of Parliament by asserting the eternal supremacy of law and denying all claims set up by the king to immunity therefrom.[1]

A corollary of this great common law principle was that law had its proper source in the people, as represented in Parliament. Throughout the tremendous controversies of the seventeenth century the parliamentary party steadfastly contended for recognition of this doctrine, and with such success that after the Revolution of 1688–89 the principle became, for all practical purposes, axiomatic. A final tendency in parliamentary doctrine that may be mentioned was increased emphasis upon the rights of men as individuals. Hitherto the "people" had usually been conceived of rather as groups or associations — estates, orders, crafts, corporations — rather than as individuals, and rights had been claimed for them in their collective capacities; now the individual becomes detached from his group, and entitled, as a man, to his "natural" rights. "In the Petition of Right (1628), which marked the end of the first stage in Parliament's progress to victory, the specific privileges which the king recognized were: exemption from certain forms of taxes save when imposed by act of Parliament; the

[1] On Fortescue's political writings see W. A. Dunning, *Political Theories from Luther to Montesquieu* (New York, 1905), 201–205.

right to learn, through the writ of *habeas corpus*, the cause of imprisonment or detention by royal order; exemption from the quartering of soldiers and from the processes of martial law. During the period in which the king ruled without Parliament (1629–40) various additions to and modifications of these legal rights were asserted and tested in the courts, and the custom developed of summarizing the rights concerned under the head of 'person and estate,' or 'person and property.' These were described as the fundamental liberties of the kingdom, and during the final conflict which ended in the overthrow and death of the king the formula assumed substantially the shape that remained familiar for centuries — 'life, liberty, and property.'" [1]

Monarchy Abolished: Commonwealth and Protectorate. — Between the political theory of the Stuart kings and that of the parliamentary party there could be no compromise. The Civil War was waged, in the last analysis, to determine which of the two theories should prevail. It should be emphasized that the parliamentarians entered upon the contest with no intent to establish a government by Parliament alone, in form or in fact. It is sufficiently clear from the Grand Remonstrance of 1641 [2] that what they had in mind was merely to impose constitutional restrictions upon the crown, aside from making certain specific changes in the political and ecclesiastical order, *e.g.*, the abolition of episcopacy. The culmination of the struggle, however, in the defeat and execution of the king threw open the doors for every sort of constitutional innovation, and between 1649 and 1660 the nation was called upon to pass through an era of political experimentation happily unparalleled in its history. On May 19, 1649, kingship and the House of Lords having been abolished as equally "useless and dangerous," [3] Parliament, to complete the work of transformation, proclaimed a commonwealth, or republic; and on the great seal was inscribed the legend, "In the first year of freedom by God's blessing restored." During the period of the Commonwealth (1649–54) various plans were brought forward for the creation of a parliament elected by manhood suffrage.[4] But the scheme met with the favor of neither the leaders nor the people at large. In 1653 a constitution was adopted — the first written constitution to be put into operation in modern Europe — known as the

[1] Dunning, *Political Theories from Luther to Montesquieu*, 22.
[2] S. R. Gardiner, *Constitutional Documents of the Puritan Revolution* (Oxford, 1899), 202–232.
[3] Gardiner, *Ibid.*, 384–388; Adams and Stephens, *Select Documents*, 397–400.
[4] See especially T. C. Pease, *The Leveller Movement* (Washington, 1916).

"Instrument of Government."[1] The system for which it provided, which was intended to apply to the three countries of England, Scotland, and Ireland, set up as the executive power a life Protector, assisted by a council of thirteen to twenty-one members, and as the legislative organ a one-house Parliament of 460 members elected triennially by all citizens possessing property to the value of £300.[2] Cromwell accepted the office of Protector; and the ensuing six years form the period commonly known as the Protectorate.

Government under the Instrument was only moderately successful. Cromwell and his parliaments quarreled incessantly; in particular, they could not agree as to whether the powers of Parliament should be construed to extend to the revision of the constitution. In 1657 the Protector was asked to assume the title of king. This he refused to do, but he did accept a new constitution, the "Humble Petition and Advice," in which a step was taken toward a return to the governmental system swept away in 1649.[3] This step comprised, principally, the reëstablishment of a Parliament of two chambers — a House of Commons and, for lack of agreement upon a better designation, "the Other House." Republicanism, however, failed to strike root. Shrewder men, including Cromwell, had recognized from the first that the English people were monarchist at heart, and it is not going too far to say that the restoration of kingship was inevitable. Even before the death of Cromwell, in 1658, the trend was distinctly in that direction, and after the hand of the great Protector was removed from the helm such a consummation was only a question of time and means. On May 25, 1660, Charles II, the third Stuart, having engaged to grant a general amnesty and to accept such measures of settlement of religion as Parliament should agree upon, landed at Dover and was received with general acclamation.[4]

[1] Gardiner, *Documents*, 405–417; Adams and Stephens, *Select Documents*, 407–416. The first written constitution drawn up in modern Europe was the "Agreement of the People," presented to the House of Commons in 1649. This instrument, however, was never put into operation.

[2] On the history of this unicameral parliament see J. A. R. Marriott, *Second Chambers, an Inductive Study in Political Science* (Oxford, 1910), Chap. iii; A. Esmein, "Les constitutions du protectorat de Cromwell," in *Rev. du Droit Public*, Sept.–Oct. and Nov.–Dec., 1899.

[3] Gardiner, *Documents of the Puritan Revolution*, 447–459.

[4] The best of the general treatises covering the period 1603–60 are F. C. Montague, *History of England from the Accession of James I to the Restoration* (London, 1907), and G. M. Trevelyan, *England Under the Stuarts* (London, 1904). The monumental works within the field are those of S. R. Gardiner, *i.e.*, *History of England*, 1603–42, 10 vols. (new ed., London, 1893–95); *History of the Great Civil*

Monarchy Restored: the Later Stuarts. — The years 1660–89 witnessed a final grand experiment to determine whether a Stuart could, or would, govern constitutionally. The constitution in accordance with which Charles II and James II were expected to govern was that which had been built up during preceding centuries, amended by the important reforms introduced by Parliament on the eve of the Civil War. The settlement of 1660 was a restoration no less of Parliament than of the monarchy, in respect both to structure and to functions. Although the supremacy of Parliament was not declared in any formal statement, the chambers were in fact reëstablished upon their earlier foundations, and in them remained the power to enact all legislation and to sanction all taxation. The spirit, if not the letter, of the agreement in accordance with which the Stuart house was restored forbade the farther imposition of taxes by the arbitrary decree of the crown and all exercise of the legislative power by the crown singly, whether positively through proclamation or negatively through dispensation. It required that henceforth the nature and amount of public expenditures should, upon inquiry, be made known to the two houses, and that ministers should regularly be held to account for their acts and for those of the sovereign.

The enduring and world-wide significance of the Restoration has been admirably stated by an American historian as follows: "The result in 1660 . . . was a compromise; not less truly a compromise because it was expressed in facts rather than in words. The question which had arisen at the beginning of the reign of James I, whether it would be possible to make the strong monarchy of the sixteenth century and the strong parliamentary control work together in practice; what boundary line could be found between king and constitution, had been answered by the discovery of a compromise. But it was a compromise of a peculiar type. As developed in the next hundred

War, 4 vols. (London, 1894); and *History of the Commonwealth and Protectorate*, 4 vols. (London, 1894–1901). Gardiner's work was continued by C. H. Firth, who has published *The Last Years of the Protectorate*, 1656–1658, 2 vols. (London, 1909). The development of institutions is described in Taswell-Langmead, *English Constitutional History*, Chaps. xiii–xiv; Smith, *History of the English Parliament*, I, Bks. vi–vii; Pike, *History of the House of Lords, passim;* J. N. Figgis, *The Theory of the Divine Right of Kings* (Cambridge, 1896); and G. P. Gooch, *History of English Democratic Ideas in the Seventeenth Century* (Cambridge, 1898). An excellent analysis of the system of government which the Stuarts inherited from the Tudors is contained in the introduction of Prothero, *Statutes and Constitutional Documents*. Of the numerous biographies of Cromwell the best is C. H. Firth, *Oliver Cromwell* (New York, 1904). A valuable survey of governmental affairs at the death of James I is Maitland, *Constitutional History of England*, 237–280.

and fifty years, it meant that form and appearance remained with the king, the reality with Parliament. The words in which the modern constitutional lawyer states the result are as accurate as can be found: 'Sovereignty resides in the king in his Parliament.' The king is in theory sovereign, but his sovereignty can be declared and exercised only in Parliament. The king gave up the power to determine by his individual will the policy of the state, but the surrender was disguised by an appearance of power and for a long time by the exercise of very substantial powers and the permanent possession of important rights and influence. It was more than a hundred years before all that the compromise implied was clearly recognized and the balance established at its present level. But it was really made in 1600.

"In the history of government in the world no event has ever happened of greater significance or of wider influence than the making of this compromise. Upon it depended the spread of the English constitution throughout the civilized world which is one of the chief characteristics of the nineteenth century. . . . In this respect it is difficult to overstate the influence of this compromise. Had the course of English history led to a constitution in which in form and law the ministry was directly responsible to Parliament instead of to the king, not merely would it have been immensely more difficult to reconcile the sovereign to a loss of the substance of power, but the adoption of the constitution by other and unwilling monarchies would have been made a practical impossibility. The compromise feature of the present constitution by which in theory and in form the ministry, though supreme, seems to be the creature of the king and responsible to him, would have had no existence. The choice which in that case a successful revolution might offer to a sovereign between a formal direct responsibility of all the organs of actual government to the legislative assembly on one side, and an out-and-out republic on the other, would have had no particular attractiveness or significance. The world influence of the English constitution depended for its existence upon the fact that Parliament came to control the actual government in fact rather than in form, indirectly, not directly; that an actual republic was concealed under the ceremonial and theoretical forms of a continued monarchy." [1]

That Charles II (1660–85) contrived most of the time to keep within the bounds which the new system prescribed for him was due not simply to a somewhat indolent disposition but to a

[1] Adams, *Outline Sketch of English Constitutional History*, 143–145.

political insight which enabled him to see how far it was safe to go and what the consequences of transgression would be. His brother and successor, James II (1685–88), was a man of different temper. He was a Stuart of the Stuarts, irrevocably attached to the doctrine of divine right and sufficiently tactless to take no pains to disguise the fact. He was able, industrious, and honest, but obstinate and intolerant. He began by promising to preserve "the government as by law established." But the ease with which an uprising in 1685 was suppressed deluded him into thinking that through the exemption of the Catholics from the operation of existing laws oppressing them he might in time realize his ambition to reëstablish Roman Catholicism in England. He proceeded, therefore, to issue decrees dispensing with statutes which Parliament had enacted, to reëstablish the arbitrary ecclesiastical Court of High Commission abolished by Parliament in 1641 and, in 1687, to promulgate a declaration of indulgence extending to all Catholics and Nonconformists freedom in religious matters which was clearly denied by the laws of the land.[1] This arbitrary resumption of the ancient prerogative utterly subverted the compact underlying the Restoration.

The Revolution of 1688–89: the Bill of Rights. Foreseeing no relief from absolutist practices, and urged on by the birth, in 1688, of a male heir to the king, a group of leading men representing the various political elements extended to the stadtholder of Holland, William, Prince of Orange, husband of Mary, James's eldest daughter, an invitation to come over to England to uphold and protect the constitutional liberties of the realm. The result was the bloodless revolution of 1688. On November 5, William landed at Torquay and advanced toward London. James, finding himself without a party, offered vain concessions and afterwards fled to the court of his ally, Louis XIV of France. A provisional body of lords, former commoners, and officials requested William to act as temporary "governor" until the people should have chosen a national "convention."[2] This convention assembled January 22, 1689, decided that James, by reason of his flight, should be construed to have abdicated, and established William and Mary on the throne as joint sovereigns.[3]

[1] Gee and Hardy, *Documents Illustrative of English Church History*, 641–644; Adams and Stephens, *Select Documents*, 451–454.

[2] Not properly a parliament, because not summoned by a king.

[3] On the legal aspect of the Revolution, see Maitland, *Constitutional History of England*, 281–288.

With a view to making definite the terms on which the new dynasty was established, Englishmen now put into writing a considerable portion of their constitution as it then existed. On February 19, 1689, the new sovereigns formally accepted a Declaration of Right, drawn up by the convention; and an act of Parliament, December 16 following, made this instrument, under the name of the Bill of Rights, a part of the law of the land.

The Bill of Rights is not a constitution in the present-day sense of the term, or even in the sense in which the Instrument of Government of 1654 was a constitution. It does not affirm the sovereignty of the people or of Parliament. It attempts no full enumeration of the rights of the individual citizen. It does not describe or define the organs of government nor lay them out in a detailed plan. It concerns itself only with the practical difficulties which the experience of the past three years had brought to light, or at all events with those of the past two generations. It specifically denied a long list of prerogatives to which the last Stuart had laid claim — those, in particular, of dispensing with laws, establishing ecclesiastical commissions, levying imposts without parliamentary assent, and maintaining a standing army under the exclusive control of the crown. It guaranteed certain fundamental rights which during the controversies of the seventeenth century had been repeatedly brought in question, including those of petition, freedom of elections, and freedom of speech on the part of members of Parliament.[1] It affirmed the necessity of frequent meetings of Parliament; and a succession clause excluded Roman Catholics and persons who should marry Roman Catholics from the throne.[2]

The Bill of Rights, therefore, sums up the essential results of the Revolution, and, quite as truly, of the entire seventeenth century liberal movement. Furthermore, as one writer has put it, "in the historical explanation which accounts for its existence, in its logical meaning and necessary implications, and in the fundamental principles by which alone it can be justified,

[1] In this connection should be recalled the Habeas Corpus Act of 1670, which guaranteed the right of an individual, upon arrest, to have his case investigated without delay. The text is in Adams and Stephens, *Select Documents*, 440–448, and comment will be found in E. Jenks, *Select Essays on Anglo-American Legal History* (Boston, 1908), II, Chap. xxxv.

[2] A related measure is the Toleration Act of May 24, 1689, which provided "some ease to scrupulous consciences in the exercise of religion," *i.e.*, a larger measure of liberty for Protestant Nonconformists. Gee and Hardy, *Documents Illustrative of English Church History*, 654–664.

it includes all that it omits." The Revolution of 1688 and the Bill of Rights thus mark in a very important sense the culmination of English constitutional development; all that followed was but the detailed application of the principles established in the seventeenth century, the elaboration of the machinery of the finally vindicated and resistless parliamentary control. The sovereignty of the nation, the supremacy of law, the omnipotence of Parliament — no one of these was ever again seriously called in question. Kingship went on, being regarded as a natural and useful institution. But henceforth the royal tenure was not by inherent or vested right, but conditioned upon the consent of the nation as expressed through Parliament. Divine right was dead.[1]

[1] The text of the Bill of Rights is in Stubbs, *Select Charters*, 523–528. General accounts of the period 1660–89 will be found in R. Lodge, *History of England from the Restoration to the Death of William III* (London, 1910), Chaps. i–xv, and in Trevelyan, *England Under the Stuarts*, Chaps. xi–xiii. O. Airy, *Charles II* (London, 1904), is an excellent book. The development of Parliament is described in Smith, *History of the English Parliament*, I, Bk. viii, II, Bk. ix. For a succinct survey of the change in the balance of power in the constitution, wrought mainly in the seventeenth century, see A. M. Chambers, *Constitutional History of England* (New York, 1909), 317–344.

CHAPTER III

CONSTITUTIONAL DEVELOPMENT SINCE THE SEVENTEENTH CENTURY

Elements of Stability and of Change. — In its larger features, the framework of the English governmental system was substantially complete by the close of the seventeenth century. The limited monarchy, the ministry, the two houses of Parliament, and the courts of law then presented the same general appearance that they bear to-day. The fundamental principles, furthermore, upon which the government is nowadays operated were securely established. Laws could be made only by "the king in Parliament"; taxes could be levied only in the same manner; the liberty of the individual was protected by a score of specific and oft-renewed guarantees. In point of fact, however, the English constitution of 1689 was very far from being the English constitution of 1920. The overturn by which the last Stuart was driven from the throne not only marked the culmination of the revolution begun in 1640; it formed the beginning of a new era of change in which the governmental system was expanded, carried in new directions, and continuously readapted to fresh and changing conditions. At no time from William III to George V was there a deliberate overhauling of the political machinery as a whole. The American plan of holding specially chosen conventions to revise a constitution, or even to make a new one, is quite unknown to English practice. The changes were made gradually, cautiously, sometimes hardly consciously; and, save in occasional parliamentary enactments and judicial decisions, they rarely found expression in formal documents. Nevertheless, it is hardly too much to say that of the rules and practices which make up the working constitution of the United Kingdom to-day, almost all owe their form and character to developments of the past two hundred years. Much of the present machinery is also relatively new; indeed, whereas the great contribution of the seventeenth century was principles, that of the eighteenth and nineteenth centuries, as of the fourteenth and fifteenth, was institutions.

Before speaking of the characteristics of the constitution as a whole it will be well, therefore, to follow up the historical survey contained in the preceding chapter with an account of a few of the most important of these developments between 1689 and 1900. Equally weighty changes of more recent date will be described in succeeding chapters devoted to the governmental system as it now is.

The Diminished Power of the Sovereign. — First may be mentioned the working out of those practical relationships between the king on the one hand and the ministers and Parliament on the other which enabled the two houses, acting through the ministers, to exercise complete and continuous control over the affairs of the nation. The Revolution of 1688, as has been shown, took from the sovereign once for all several prerogatives which had been in dispute. William III, however, was no figurehead, and the monarch was far from having been reduced to impotence. Understanding perfectly the conditions upon which he had been received in England, William none the less did not attempt to conceal his innate love of power. He claimed prerogatives which his Whig supporters were loath to acknowledge, and he habitually exercised in person, and with telling effect, the functions of sovereign, premier, foreign minister, and military autocrat.[1] His successor, Anne, although far from aggressive, was not less attached to the interests of strong monarchy. It was only upon the accession of the Hanoverian dynasty, in 1714, that the bulk of those powers of government which the sovereign had hitherto retained slipped finally and completely into the grasp of the ministers and of Parliament. George I (1714–27) and George II (1727–60) were not the nonentities they have been painted, but, being alien alike to English speech, customs, and political institutions, they were not in a position to defend the prerogatives which they had inherited. Under George III (1760–1820) there was a distinct revival of the monarchical idea. The king, if obstinate and below the average intellectually, was honest, courageous, and ambitious. He gloried in the name of Englishman, and, above all, he was determined to recover for the sovereign some measure of the prestige and authority that his predecessors had lost. For a score of years the influence which he personally exerted upon government and politics exceeded anything that had been known since the days of William III. In 1780 the House of Commons gave expression to its appre-

[1] On the constitution as it stood at the death of William III, see Maitland, *Constitutional History of England*, 281–329.

hension by adopting a series of resolutions, of which the first asserted unequivocally that "the influence of the crown has increased, is increasing, and ought to be diminished."

After the retirement of Lord North in 1782, however, the power of the sovereign fell off rapidly, and during the later portion of the reign, clouded by the king's insanity, all that had been gained for royalty was again lost. Under the Regency (1810–20) and during the reign of the reactionary and scandal-smirched George IV (1820–30) the popularity, if not the power, of the king reached its nadir. In the days of the genial William IV (1830–37) popularity was regained, but not power. The long reign of the virtuous Victoria (1837–1901) thoroughly rehabilitated the monarchy in the respect and affections of the British people; and the position thus recovered suffered no impairment at the hands of Edward VII and George V. As will be pointed out in another place, the influence which the sovereign may wield, and during the past three quarters of a century has wielded, in the actual conduct of public affairs is by no means unimportant. But, as will also be emphasized, that influence is only the shadow of the authority which the king once — even as late as the opening of the eighteenth century — possessed. It is largely personal rather than legal; it is more frequently asserted within the domain of foreign relations than within that of domestic affairs; and as against the will of the nation expressed through Parliament it is powerless.[1]

Ascendancy of the House of Commons. — A second transformation wrought in the working constitution since 1689 is the shifting of the center of gravity in Parliament from the House of Lords to the House of Commons, together with a notable democratization of the representative chamber. In the days of William and Anne the House of Lords was distinctly more dignified and influential than the House of Commons. During the period covered by the ministry of Robert Walpole (1721–42), however, the Commons rose rapidly to preponderance. One cause was the Septennial Act of 1716, which extended the life of a parliament from three years to seven, thus increasing the continuity and attractiveness of membership in the Commons. Another was the growing importance of the power of the purse

[1] On the monarchical revival under George III, see D. A. Winstanley, *Personal and Party Government; a Chapter in the Political History of the Early Years of the Reign of George III, 1760–1766* (Cambridge, 1910). An excellent appraisal of the status of the crown throughout the period 1760-1860 is presented in T. E. May, *Constitutional History of England since the Accession of George III*, edited and continued by F. Holland (London, 1912), I, Chaps. i–ii.

as wielded by the Commons. A third was the fact that Walpole, throughout his extended ministry, sat steadily as a member of the lower chamber and made it the scene of his remarkable activities.

The establishment of the supremacy of the Commons as then constructed did not, however, mean the triumph of popular government. It was but a step toward that end. The House of Commons in the eighteenth century was composed of members elected in the counties and boroughs under a severely restricted franchise, or appointed outright by closed corporations or by individual magnates, and it remained for Parliament during the nineteenth century, by a series of memorable statutes, to extend the franchise successively to groups of people hitherto politically powerless, to reapportion parliamentary seats so that political influence might be distributed with some fairness among the voters, and to regulate the conditions under which campaigns should be carried on, elections conducted, and other operations of popular government undertaken. Of principal importance among the pieces of legislation by which these things were accomplished are the Reform Act of 1832, the Representation of the People Act of 1867, the Ballot Act of 1872, the Corrupt and Illegal Practices Act of 1883, the Representation of the People Act of 1884, and the Redistribution of Seats Act of 1885. The nature of these measures, and of their notable successor, the Representation of the People Act of 1918, will be explained presently.[1]

Rise of the Cabinet. — The period under review is farther important because it produced the most remarkable feature of the English constitutional system of to-day, namely, the cabinet; and not merely the cabinet as an institution, but the cabinet system of government. The creation of the cabinet was a gradual process, and both the process and the product are unknown to the letter of English law.[2] It is customary to regard as the immediate forerunner of the cabinet the so-called "cabal" of Charles II, *i.e.*, the shifting group of persons whom that sovereign selected from the Privy Council and took advice from informally, in lieu of the Council as a whole, just as the Privy Council itself had been detached from the Great Council of Norman-Angevin times. In point of fact, the practice of referring important questions to a specially chosen group, or inner circle, of the large and unwieldy Council antedated Charles II; both the practice and the name "cabinet council" existed under

[1] See Chap. VIII. [2] See, however, p. 103.

Charles I.[1] Not, however, until after 1660 were the conditions right for the cabinet to acquire a definite place in the machinery of government; not until after that date would it have been possible for the *cabinet system* to become the central fact and chief glory of the constitution.

Development under Charles II did not go far. On the theory that the "great number of the Council made it unfit for the secrecy and dispatch that are necessary in many great affairs," the king drew round himself a half-dozen ministers who had his confidence and who also were influential with Parliament. To these he referred the great questions that came up, and to them he looked to procure from Parliament the legislation that he desired. These ministers, the Earl of Clarendon (who for a time belonged to the group) tells us, "had everyday conference with some select persons of the House of Commons, who had always served the king, and upon that account had great interest in that assembly, and in regard of the experience they had and of their good parts were hearkened to with reverence. And with those they consulted in what method to proceed in disposing the house, sometimes to propose, sometimes to consent to, what should be most necessary to the public; and by them to assign parts to other men, whom they found disposed and willing to concur in what was to be desired: and all this without any noise, or bringing many together to design, which ever was and ever will be ingrateful to Parliaments, and, however it may succeed for a little time, will in the end be attended by prejudice."

Herein may be discerned the germ of the later cabinet system: a single, small group of the king's principal ministers, now giving collective advice to the sovereign, now introducing and urging forward legislation that the "Government" desired. However, the system itself did not yet exist. The king chose his ministers with no necessary consideration of the political complexion or the wishes of Parliament; practically, if no longer theoretically, these ministers were responsible, not to Parliament or the nation, but to the king himself. Far from recognizing in the little ministerial group an institution that might be utilized to bring the king under still farther restraint, the leaders of liberal thought attacked it as being an agency of intrigue in the sovereign's interest; and the name "cabinet" (arising from the king's habit of receiving the members in a small private room, or cabinet, in the palace) first came into use as a term of reproach.

[1] E. I. Carlyle, "Committees of Council under the Early Stuarts," in *Eng. Hist. Rev.*, Oct., 1916.

The device, none the less, met a serious need; in truth, it may be said to have been ultimately indispensable. "If fully carried out in practice," says a leading authority, "the compromise [involved in the Restoration of 1660] would mean the direct supervision and control of all lines of government policy and executive action by the legislative assembly. Such an arrangement was new to all human experience and naturally there existed no machinery by which it could be carried out in practice, no institutional forms through which a legislature could exercise an executive authority which in theory it did not have. Constitutional machinery for the practical operation of the compromise must be devised, and the origin and growth of this machinery is the origin and growth of the cabinet with the principle of ministerial responsibility to Parliament. Or we may state the fact in another way: the English system of vesting the executive authority in a cabinet virtually chosen by the legislature and held under a close control by it, was the method finally devised to carry out in the practical operation of the country the sovereignty of Parliament which had resulted from the constitutional advance of the seventeenth century." [1]

In 1688 the cabinet was still a half-formed and misunderstood institution, and the "cabinet system" was not conceived of at all. But the events of that and the succeeding year, insuring the permanent supremacy of Parliament, made the development of cabinet government inevitable. William III retained complete freedom in the choice of ministers and considerable control over their actions. But his reign brought one important step forward. Failing in the attempt to govern with a ministry including both Whigs and Tories, the king, in 1693–96, gathered around himself a body of advisers composed exclusively of Whigs; and, although this was at first a matter of convenience and not of principle, it gradually became an axiom that the chief ministers should be selected from that party alone which had a majority in the House of Commons. Parliament, perceiving but not understanding what was going on, continued to be apprehensive; in the Act of Settlement, in 1701, it actually sought to stifle the new system, although that part of the measure which bore upon the subject was amended before being put into operation.[2]

The reigns of George I and George II — a period of forty-five years in which the sovereign took no active part in public affairs — became the great formative period in cabinet history.

[1] Adams, *Outline Sketch of English Constitutional History*, 153.
[2] See p. 97.

Successive groups of Whig ministers banded themselves firmly together to keep up a Whig majority in the House of Commons and to uphold the Hanoverian line against the Tories and Jacobites; and in 1742, when Sir Robert Walpole — the first of prime ministers — lost the support of this majority, he promptly, and as a matter of course, resigned. In this same period the king ceased to attend cabinet meetings, and Parliament, beginning to understand how the cabinet system enabled it to enforce the responsibility of ministers, for the first time became willing to permit the old rights of impeachment and bill of attainder to be tacitly dropped. By the end of the eighteenth century the conception of the cabinet was definitely fixed as a body normally consisting (*a*) of members of Parliament (*b*) of the same political views (*c*) chosen from the party having a majority in the House of Commons (*d*) prosecuting a concerted policy (*e*) under a common responsibility to be signified by collective resignation in the event of parliamentary censure, and (*f*) acknowledging a common subordination to one chief minister.[1] Not much before the middle of the nineteenth century, however, were the implications and bearings of the cabinet system fully and generally understood; and the system was for the first time clearly and fully described in writing in Walter Bagehot's "English Constitution," published in 1867.[2]

Beginnings of Political Parties. — A fourth development in the period under survey is the rise of political parties and the fixing of the broader aspects of the present party system. In no nation to-day does party play a rôle of larger importance than in Great Britain. Unknown to the written portions of the constitution, and almost unknown to the ordinary law, party management and party operations are, none the less, of constant and fundamental importance in the actual conduct of government. The origins of political parties in England are not easy to trace. Some writers will not admit that there was true party organization and life before the reign of Anne, or even before the ripening of the cabinet system under the early Georges. Others

[1] H. D. Traill, *Central Government* (London, 1881), 24–25.

[2] On the rise of the cabinet see, in addition to the general histories, M. T. Blauvelt, *Development of Cabinet Government in England* (New York, 1902), Chaps. i–viii; E. Jenks, *Parliamentary England; the Evolution of the Cabinet System* (New York, 1903); H. B. Learned, "Historical Significance of the Term 'Cabinet' in England and the United States," in *Amer. Polit. Sci. Rev.*, August, 1909; H. W. V. Temperley, "The Inner and Outer Cabinet and the Privy Council, 1679–1683," in *Eng. Hist. Rev.*, Oct., 1912; W. R. Anson, "The Cabinet in the Seventeenth and Eighteenth Centuries," *ibid.*, Jan., 1914; E. R. Turner, "The Cabinet in the Eighteenth Century," *ibid.*, Apr., 1917.

find party beginnings in the reign of James II; still others push them back, ministry by ministry, to the Restoration; Macaulay, indeed, thought that the first English parties were the Cavalier and Roundhead factions as aligned after the adoption of the Grand Remonstrance by the Long Parliament in 1641.

It will not strike far from the truth to say that the first groups that can be thought of as parties in the present-day sense of the term — groups having a distinctive theory of government, a reasonably stable and continuous organization, and a purpose to control legislation by means of a majority in the House of Commons — were the Whigs and Tories, sprung from the Petitioners and Abhorrers, and, back of them, the Country and Court parties, of the reign of Charles II. Dividing upon the exclusion of James, as a Catholic, from the throne, and upon other issues, these two elements gradually assumed well-defined and fundamentally irreconcilable positions upon the great public questions of the day. Broadly, the Whigs stood for toleration in religion and for parliamentary supremacy in government; the Tories for Anglicanism and the royal prerogative. And long after the Stuart monarchy was a thing of the past these two great parties kept up their struggles upon these and other issues. After an unsuccessful attempt to govern with the coöperation of both parties William III, as has been stated, fell back upon the support of the Whigs. At the accession of Anne, in 1702, the Whigs were turned out of office and the Tories (who already had had a taste of power in 1698–1701) were put in control. They retained office during the larger portion of Anne's reign, but at the accession of George I they were compelled to give place to their rivals, and the period 1714–61 was one of unbroken Whig ascendancy. As has been pointed out, this was the period of the development of the cabinet system, and between the rise of that system and the growth of government by party there was a close and inevitable connection. By the end of the eighteenth century the rule had become inflexible that the cabinet should be composed of men who were in sympathy with the party at the time dominant in the House of Commons, and that whenever the nation elected to the popular branch a majority hostile to the ruling ministry, that ministry should forthwith resign.[1]

The Creation of "Great Britain": the Union with Scotland (1707). — Finally may be mentioned the important changes

[1] On the rise of political parties consult W. C. Abbott, "The Origin of English Political Parties," in *Amer. Hist. Rev.*, July, 1919. For other references see p. 241.

that flowed from the reorganization of the British Isles under a single compact governmental system. The United Kingdom, as we know it to-day, represents a union of four formerly independent countries — England, Wales, Scotland, and Ireland. After much hard fighting, a large part of Wales was incorporated into English territory by Edward I in 1284. Six Welsh counties were created, on the English model; the English legal system was introduced; the Welsh bishoprics were brought under the influence of the ecclesiastical province of Canterbury. Henry VIII completed the work in 1535 by setting up six more counties and extending to both the counties and the leading towns the right of sending representatives (twenty-three in all) to the House of Commons. Thenceforth Wales was fully united, for governmental purposes, with England; indeed, "England" now includes Wales unless special exception is made.

Edward I, the conqueror of Wales, undertook also to subjugate Scotland. But the Scottish sense of nationality proved too strong to be overcome at that time, and the northern kingdom remained entirely separate until, in 1603, its sovereign, James VI, ascended the throne of England as James I. Barring a brief interval during the Protectorate, the legal relation between the two realms continued for more than a century to be simply that of a personal union through the crown. The kingdom north of the Tweed had its own parliament, its own established church, its own laws, its own courts, its own army, and its own system of finance. The arrangement produced a good deal of confusion and strife, and many people in both countries believed a closer union necessary and inevitable. By the opening of the eighteenth century Scottish national pride and local prejudice had been sufficiently overcome, and the desired change was made in an act of union passed by the two parliaments in 1707. The two neighboring lands were erected into a single kingdom, known henceforth as Great Britain. The Scottish parliament was abolished, and representation was given the Scottish nobility and people in the British parliament at Westminster. The quota of commoners was fixed at forty-five, thirty to be chosen by the counties and fifteen by the boroughs; that of peers at sixteen, to be elected by the entire body of Scottish peers at the beginning of each parliament. All laws concerning trade, excises, and customs were required to be uniform throughout the two countries; but the separate laws of each country — both common law and statutes — upon other matters were continued in operation, subject to revision by the common Parliament.

The Scottish judicial system, which was in some respects superior to the English system, went on as before, and the two are still separate; the Scottish schools, which were also superior to the English, were to continue unchanged; and the independence of the established Presbyterian Church was guaranteed. The separate identity of Scotland persists also in most branches of administration. The union, however, is as close as the interests of good government require; and, although the Highlands were not entirely won over until after the middle of the century, the new system has proved in later days both successful and popular.[1]

The Creation of the United Kingdom: the Union with Ireland (1800). — The history of Ireland, in most of its phases, is that of a conquered territory, and until late in the eighteenth century the country, in its constitutional status, approximated a modern non-self-governing colony. During the Middle Ages the common law and the political institutions of England were introduced in the settled portions of the island (the Pale), and a crude sort of parliament came into existence, although only the English settlers were represented, or greatly cared to be represented, in it. In 1494 the lord deputy, Sir Edward Poynings, convened a parliament at Drogheda which passed a law providing that thereafter no parliament should be held in Ireland until the Irish executive and privy council had informed the king of the legislation intended, and until the proposed laws had been approved by the king and his (English) council. Existing English laws, so far as applicable, were to have force in Ireland; and most parts of the old Statute of Kilkenny, passed in 1367 with a view to a strict segregation of the English and Irish peoples in the island, were revived. The first of these provisions, commonly known thereafter as Poynings's Law, effectually stifled parliamentary development for three hundred years. The parliament lived on, but it made no pretense of being representative of the whole population, and it had no independence and little initiative. In 1541 Irish members were admitted, but they never counted for much; after the failure of the rising in aid of James II, in 1688–89, Catholics were debarred, and a little later they were definitely excluded from voting at parliamentary elections. The government of Ireland in the eighteenth century was carried on by a Lord Lieutenant, or, in his absence, by lords justices, in

[1] J. Mackinnon, *The Union of England and Scotland* (London, 1896). This scholarly volume covers principally the period 1695–1745. See also P. H. Brown, *The Legislative Union of England and Scotland* (Oxford, 1914). On the superiority of the Scottish public organization and life in 1707 see Alison, "The Old Scottish Parliament," in *Blackwood's Mag.*, Nov., 1834.

the name of the king, but under the ultimate control of Parliament at Westminster, which in 1719 asserted its full power to make statutes binding on the Irish people.

After a hundred years of political and economic prostration, the Irish nation found a favorable opportunity to reassert its claims to autonomy. About 1780, when England was at bay, with most of Europe hostile or actually in arms against her, and with the best of her colonial dominions about to slip from her grasp, the eloquent Henry Grattan put himself at the head of a movement designed to break the power of the English Parliament in Irish affairs; and in 1782 a law was passed at Westminster superseding Poynings's statute and granting that thenceforth the Irish people should be bound only by laws passed by the king and the parliament of Ireland. Although loudly acclaimed, this legislation yielded no great advantage. Catholics were admitted to the franchise only in 1793, and they never became eligible to membership; hence the parliament was essentially English rather than Irish. Besides, while reasonably independent in law-making, the body had no control whatever over the English-appointed executive. There was some helpful legislation; but the uneducated masses were disappointed, and, played upon by French influence, they broke into open rebellion in 1798.

The suppression of the insurrection was followed by one of the most important events in Irish history, namely, the establishment of a legislative union with Great Britain. The considerations that led the government of the younger Pitt to decide upon this step were, chiefly: (1) locked in deadly combat with one of the most powerful continental foes she had ever encountered, Britain must consolidate her resources, and, in particular, must draw under close control the region which was furnishing a base for the enemy's flank attack; (2) Grattan's parliament had not made much headway toward a betterment of conditions in the island; and (3) reasonable concessions would be more likely to be made and the longstanding difficulties removed by merging Ireland into a union with Great Britain, as Scotland had formerly been joined with England.

Hence, an Act of Union creating the "United Kingdom of Great Britain and Ireland" was drawn up and presented to the two parliaments. Opinion in Ireland was decidedly hostile, and it was only by open and wholesale bribery that the bill was got through at Dublin, in February, 1800. The British parliament passed it five months later, and on January 1, 1801, the

measure took effect. The Irish parliament was now abolished, and it was arranged that Ireland should be represented in the common Parliament by four spiritual lords and twenty-eight temporal peers, chosen by the Irish peerage for life, and by one hundred members (sixty-four sitting for counties, thirty-five for boroughs, and one for the University of Dublin) of the House of Commons. The Anglican Church of Ireland was merged with the established Church of England, under the name of the United Church of England and Ireland, although less than one fifth of the inhabitants of the island were adherents of it. Customs duties between the two countries were to be gradually abolished; for twenty years contributions to revenue by the two were to be in the proportion of fifteen to two; and all laws in both were to remain in force until repealed. The union was in the nature of a contract, and while the Church was disestablished in 1869 and one or two other changes were made, in the main the arrangement stood intact until 1914, when, as a result of many decades of agitation and controversy, a Home Rule Act sought to turn back the pages of history and restore to Ireland a separate parliament. The Great War caused this measure, as soon as passed, to be suspended; and at the date of writing (May, 1920) it does not yet appear whether it, or a substitute for it, will finally be put into operation.[1]

[1] See p. 321. An abridgment of the text of the Act of Union with Scotland is printed in Adams and Stephens, *Select Documents*, 479–483; of that of the Act of Union with Ireland, *ibid.*, 497–506. The full text of the former will be found in Robertson, *Select Statutes, Cases, and Documents*, 92–105; that of the latter, *ibid.*, 157–164. On Ireland before the Union see May and Holland, *Constitutional History of England*, II, Chap. xvi, and E. R. Turner, *Ireland and England* (New York, 1919), Chaps. iii–vi. A trustworthy account of the events leading to the Act of Union is J. R. Fisher, *The End of the Irish Parliament* (London, 1911). See also references on p. 285 below.

CHAPTER IV

THE CONSTITUTION AND THE GOVERNMENT

What "Constitution" Means in England. — Writers on government use the term "constitution" in two widely differing senses. Sometimes they mean by it a written instrument of fundamental law which outlines the structure of a governmental system, defines the powers of the governing bodies and officers, enumerates and guarantees the rights of citizens, and perhaps lays down certain general principles and rules to be observed in carrying on the affairs of state. The document may have been framed by a special, constituent assembly, or drafted by an ordinary legislative body, or promulgated upon the sole authority of a prince or dictator. On the other hand, the writer may employ the term to denote the whole body of laws, customs, and precedents, only partially, or even not at all, committed to writing, which determine the organization and workings of a government. The two usages are equally correct, provided one makes clear which is being followed at any given time. Thus the constitution of the United States is the document drawn up at Philadelphia in 1787 and put into operation in 1789, plus the eighteen amendments adopted in subsequent years; *or* it is this instrument taken in conjunction with a great mass of rules, laws, customs, and interpretations, which lose none of their importance, or even of their binding character, because no mention of them can be found in the fundamental document.[1]

Upwards of a century ago a scholarly French writer, Alexis de Tocqueville — author of a valuable work on democracy in America — was led to remark that there is no such thing as an English constitution.[2] As a Frenchman, he was accustomed to

[1] The nature, classes, and modes of growth of constitutions are adequately discussed in J. W. Garner, *Introduction to Political Science* (New York, 1910), Chap. xii, and W. F. Willoughby, *Government of Modern States* (New York, 1919), Chaps. vi–vii.

[2] *De la démocratie en Amérique*, published at Paris in 1835. "In England," he says, "the Parliament has an acknowledged right to modify the constitution; as, therefore, the constitution may undergo perpetual changes, it does not in reality exist (*elle n'existe point*); the Parliament is at once a legislative and a constituent assembly." *Œuvres Complètes*, I, 166–167.

consider a constitution as being necessarily a document, or at all events a group of documents, framed and adopted at a given time, and by some convention or other special agency, and setting forth in logical array the framework and principles of the government operating under it. In England he could find nothing of this sort; nor can one do so to-day. There is, however, it need hardly be affirmed, an English constitution — one which is at once the oldest and the most influential of all constitutions of our time. It is not contained in any single document, or in a group of documents; a great, although diminishing, portion of it is not in written form at all; it is not the work of any special constitution-framing body or power; far from being adopted at any one time, it is a product of fifteen centuries of political growth, and much of it was never formally "adopted" at all. In short, the term "constitution" as applied to England must always be used in the broader sense indicated above. The English constitution is a complex of elements which one could hope to bring together only by examining intensively a thousand years and more of history, by laying hold of a statute here and of a judicial decision there, by taking constant account of the rise and crystallization of political usages, and by probing to their inmost recesses the mechanisms of administration, law-making, taxation, elections, and judicial procedure as they have been, and as they are actually operated before the spectator's eyes.

Component Elements: the Law of the Constitution. — These elements have been classified in various ways. For purposes of brief enumeration they may be gathered into five main categories. In the first place, there are treaties and other international agreements, which in Great Britain as in the United States, are considered parts of the supreme law of the land. In the second place, there is a group of solemn engagements which have been entered into at times of national crisis between parties representing conflicting political forces. Of such character are the Great Charter, the Petition of Right, and the Bill of Rights. A third and larger category comprises parliamentary statutes of such character and importance as to add to or modify governmental powers or procedure. Statutes of this type obviously include the Habeas Corpus Act of 1679, the Act of Settlement of 1701, the Septennial Act of 1716, Fox's Libel Act of 1792, the Reform Acts of 1832, 1867, and 1884, the Municipal Corporations Act of 1835, the Parliamentary and Municipal Elections Act of 1872, the Local Government Acts of 1888 and 1894, the Parliament

Act of 1911, and the Representation of the People Act of 1918. In the fourth place there is the common law, a vast body of legal precept and usage which through the centuries has acquired binding and almost immutable character.[1] The first three elements mentioned, *i.e.*, treaties, solemn political engagements, and statutes, exist solely, or almost so, in written form. The rules of the common law, however, have not been reduced to writing, save in so far as they are contained in reports, legal opinions, and, more particularly, formal decisions of the courts, such as those on the rights of jurymen, on the prerogative of the crown, on the privileges of the houses of Parliament and of their members, and on the rights and duties of the police.

Component Elements: the Conventions of the Constitution. — Finally, there are those portions of the constitution which have been aptly termed by Professor Dicey "the conventions."[2] The "law" of the constitution, composed of the four elements that have been enumerated, is at all points, whether written or unwritten, enforceable by the courts; the conventions, although they may, and not seldom do, relate to matters of the most vital importance, are not so enforceable. The conventions consist of understandings, practices, and habits which alone regulate a large proportion of the actual relations and operations of the public authorities. They may somewhere be described in writing, but they do not appear in the statute books or in any instrument which can be made the basis of action in a court of law. For example, it is a convention of the constitution that forbids the king to veto a measure passed by the houses of Parliament. If the sovereign were in these days actually to veto a bill, the political consequences might be serious, but there could be no question of the technical legality of the deed. It is by virtue of a convention, not a law, of the constitution, that ministers resign when they have ceased to command the confidence of the House of Commons; that a bill must be read three times before being finally voted upon; that Parliament is convened annually, and that it consists of two houses. The cabinet, and all that the cabinet, as such, stands for, rests entirely upon convention. Obviously, any one seeking to understand the constitutional system as it is and as it operates must fix his attention upon the conventions quite as intently as upon the positive rules of law.[3]

[1] See p. 207.

[2] *Introduction to the Study of the Law of the Constitution* (8th ed.), Chap. xiv.

[3] Convention occupies a large place in most political systems, even in countries which are governed under elaborate written constitutions. Their importance in the government of the United States is familiar. (See Bryce, *American Common-*

The English constitution is indeed, as Lord Bryce has described it, "a mass of precedents carried in men's minds or recorded in writing, of dicta of lawyers or statesmen, of customs, usages, understandings, and beliefs bearing upon the methods of government, together with a certain number of statutes, . . . nearly all of them presupposing and mixed up with precedents and customs, and all of them covered with a parasitic growth of legal decisions and political habits, apart from which the statutes would be almost unworkable, or at any rate quite different in their working from what they really are." [1] At no time has an attempt been made to collect and to reduce to writing this stupendous mass of scattered material, and no such attempt is likely ever to be made. "The English," as the French critic Boutmy remarks, "have left the different parts of their constitution where the waves of history have deposited them; they have not attempted to bring them together, to classify or complete them, or to make of it a consistent or coherent whole." [2]

Why are the conventions of the constitution so scrupulously observed, notwithstanding their lack of legal force? It is difficult to answer the question to one's entire satisfaction, but two or three considerations go far toward the desired explanation. In the first place, as Dicey points out, a main, if not the ultimate, sanction is the fact that it is not possible to violate important conventions without colliding with the statutes or, at all events, running into overwhelming practical difficulties.[3] Thus, unless Parliament renews the Army Act every year, the government would lose all disciplinary authority over the troops; and though most of the revenue is collected and some of it is spent without annual parliamentary authorization, not a penny could be laid out on the army, the navy, or the entire civil service. In short, if the great conventions were ignored, the wheels of government would be stopped. This, however, does not cover the whole case. As Lowell points out, England is not obliged to continue forever holding annual sessions of Parliament because a new mutiny act must be passed and new appropriations made

wealth, 3d ed., I, Chaps. xxxiv–xxxv). On the influence of conventions in France see H. Chardon, *L'Administration de la France; les fonctionnaires* (Paris, 1908), 79–105.

[1] "Flexible and Rigid Constitutions," in *Studies in History and Jurisprudence* (New York, 1901), 134.

[2] *Studies in Constitutional Law: France — England — United States*, trans. by Dicey (London, 1891), 6. Cf. J. O. Taylor, "A Written Constitution for Britain," in *Jurid. Rev.*, Dec., 1914.

[3] *Law of the Constitution*, Chap. xv.

every twelve months; the omnipotent Parliament could, quite as well as not, pass a permanent army act, grant the annual taxes for a term of years, and charge all ordinary expenses on the Consolidated Fund, from which many charges already are paid without authorization of Parliament in each case.[1]

The conventions are therefore supported by something more than the realization that to violate them may mean to run counter to the law; the law itself can readily be changed. This additional support is drawn from public opinion, especially opinion among the governing elements. "In the main," says Lowell, "the conventions are observed because they are a code of honor. They are, as it were, the rules of the game, and the single class in the community which has hitherto had the conduct of English public life almost entirely in its own hands is the very class that is peculiarly sensitive to obligation of this kind. Moreover, the very fact that one class rules, by the suffrance of the whole nation, as trustees for the public, makes that class exceedingly careful not to violate the understandings on which the trust is held."[2] The conventions have been worked out through the centuries of conflict and adaptation that make up the story of English political growth; they exist to secure obedience to the will of the House of Commons, and ultimately to the will of the nation; they constitute the means by which, without the jars and strains that would have accompanied direct legal restraints upon the crown, Parliament has drawn under its own control all powers of the sovereign that have not fallen into complete disuse.

Aspects of Continuity and of Change. — In view of what has been said, two observations, representing opposite aspects of the same truth, are pertinent. The first is that in respect to the principles and many of the practices of the English constitution it is profoundly true that, in the familiar phrase of Bishop Stubbs, the roots of the present lie deep in the past.[3] The second is that the English constitution is a living organism, so subject to change that any description of it that may be attempted is likely to stand in need of some revision as soon as it is printed. At no time, as the historian Freeman wrote, "has the tie between the present and the past been rent asunder; at no moment have Englishmen sat down to put together a wholly new constitution in obedience to some dazzling theory."[4] On the contrary, each step in the growth of the constitutional

[1] *Government of England*, I, 12. Cf. p. 187 below.
[2] *Ibid.*, I, 12–13.
[3] *Constitutional History of England*, I, prefatory note.
[4] *Growth of the English Constitution*, 19.

system has been the natural consequence of some earlier step. Great changes, it is true, have been wrought. To mention but the most obvious illustration, autocratic kingship has been replaced by a parliamentary government based upon a thoroughgoing political democracy. None the less, transitions have as a rule been so gradual, deference to tradition so habitual, and the disposition to cling to ancient names and forms, even when the spirit had changed, so deep-seated, that the constitutional history of England presents an aspect of continuity that cannot be paralleled in any other country of Europe.

The letter of a written constitution may survive through many decades unchanged, as has that of the Italian *Statuto* of 1848, and as did that of the American constitution between 1804 and 1865. No constitutional system, however, long stands still, and least of all one of the English type, in which there is little of even the formal rigidity that arises from written texts. Having no fixed and orderly shape assigned it originally by some supreme authority, the constitution of the United Kingdom has retained throughout its history a notable flexibility. It is by no means to-day what it was fifty years ago; fifty years hence it will be by no means what it is to-day. In times past changes have sometimes been accompanied by violence, or, at all events, by extraordinary demonstrations of the national will. Nowadays they are introduced through the ordinary and peaceful processes of legislation, of judicial interpretation, and of administrative practice. Sometimes, as in the case of the Parliament Act of 1911 altering the powers of the House of Lords, they are accompanied by heated controversy and wide-spread public agitation. Frequently, however, they represent inevitable and unopposed amplifications of existing law or practice, and are hardly taken note of by the nation at large.

Power of Parliament to Alter the Constitution. — In the main, changes are made in the English constitution to-day by act of Parliament. In the United States and in some European countries a sharp distinction is drawn between the powers of constitution framing and amendment and the powers of ordinary legislation. Our Congress may propose a constitutional amendment; but the change can be made only by an affirmative vote of the legislatures of three fourths of the states.[1] In England powers are not thus divided. All are vested alike in Parliament; and so far as the processes of enactment, repeal, and revision

[1] An alternative mode of ratification is by conventions, acting affirmatively in three fourths of the states. But this plan has never been followed.

are concerned, there is no difference whatever between a measure affecting the fundamental principles of the governmental system and a statute pertaining to the most petty subject of ordinary law. "Our Parliament," observes Anson, "can make laws protecting wild birds or shell-fish, and with the same procedure could break the connection of Church and State, or give political power to two millions of citizens, and redistribute it among new constituencies." [1] The keystone of the law of the constitution is, indeed, the omnipotence of Parliament in the spheres both of constitution-making and of ordinary legislation. In Parliament is embodied the supreme will of the nation; and although from time to time that will may declare itself in widely varying, and even inconsistent, ways, at any given moment its pronouncements are authoritative and conclusive.

It is true that of late there has been a growing feeling that when fundamental and far-reaching changes are under consideration Parliament ought not to act until after the matter has been put before the people at a general election. It was in deference to this idea that the parliamentary election of December, 1910, was ordered, with the reform of the House of Lords as the one great issue.[2] No fixed rule of the kind, however, has established itself, as is evidenced by the enfranchisement of six million women — not to mention other revolutionary changes in the electoral system — accomplished in the Representation of the People Act of 1918 entirely without formal popular mandate; and it remains true not only that the electorate has no legal means by which it can initiate and obtain consideration of constitutional changes, but that it has no way of directly expressing its opinions regarding proposals of this character originated by Parliament, save in the uncertain event of a dissolution, followed by a national election, before a final decision shall have been reached. The English political system, therefore, "furnishes a perfect example where the electorate has not only wholly surrendered to the government the exercise of constituent powers, or, to speak more correctly, has acquiesced in the complete exercise by that body of constituent powers, but has imposed upon that body no obligation to exercise these powers in any manner different from that followed in the enactment of ordinary law." [3]

[1] *Law and Custom of the Constitution* (4th ed.), I, 358. See also Dicey, *Law of the Constitution*, Chap. i, and F. Pollock, *First Book of Jurisprudence for Students of the Common Law* (London, 1896), Pt. ii, Chap. iii.

[2] See p. 152.

[3] Willoughby, *Government of Modern States*, 123. On the similar situation in France, see p. 384 below. For brief discussions of the general nature of the English

The Unitary System and the Powers of Parliament. From the nature of the constitution as thus outlined flow two or three major characteristics of the English governmental system. The first is the unitary, as opposed to the federal, form. A federal system of government prevails where the political sovereign (whatever it may be in the individual case) has made a distribution of the powers of government among certain agencies, central and divisional, and has done so through the medium of constitutional provisions which neither central nor divisional government has made and which are beyond the power of either to alter or rescind. The important thing is not the territorial distribution of powers, for this is a practical necessity under all forms of government, nor yet the amount or kinds of power distributed, but the fact that the distribution is made by an authority superior to both central and divisional governments. The United States has a federal form of government because the partition of powers between the national government and the state governments is made by the sovereign people, through the national constitution, and cannot be changed by the government at Washington any more than by that at Albany or Harrisburg or Indianapolis. On the other hand, the government of England is unitary, because there is but a single integral government in which all power is concentrated, namely, the government centering at London: a government which has created the counties, boroughs, and other local political areas for its own convenience, which has endowed them, as subordinate districts, with such powers as it chose to bestow, and which is free to alter them in their organization and powers at any time, or even to abolish them altogether.

It follows that the national government, being all-comprehensive, is omnipotent, and that its central, dominating organ, Parliament, knows no legal restriction of power. Every measure of Parliament, of whatever nature and under whatever circumstances enacted, is "constitutional," in the sense that it is legally valid and enforceable. When an Englishman says of a measure that it is unconstitutional he means only that it is inconsistent with a previous enactment, with an established usage,

constitution see Lowell, *Government of England*, I, 1–15; T. F. Moran, *Theory and Practice of the English Government* (new ed., New York, 1908), Chap. i; J. A. R. Marriott, *English Political Institutions* (Oxford, 1910), Chaps. i–ii; J. Macy, *The English Constitution* (New York, 1897), Chaps. i, ix; and S. Low, *The Governance of England* (London, 1904), Chap. i. A suggestive characterization is the Introduction of W. Bagehot, *The English Constitution* (new ed., Boston, 1873). A more extended analysis is Dicey, *Introduction to the Study of the Law of the Constitution*, especially the Introduction and Chaps. i, iii, xiii–xv.

with the principles of international law, or with the commonly accepted standards of morality. Such a measure, if passed in due form by Parliament, becomes an integral part of the law of the land, and as such will be enforced by the courts. There is no means by which it can be rendered of no effect, save repeal by the same or a succeeding parliament. In England, as in European countries generally, the judicial tribunals are endowed with no power to pass upon the constitutional validity of legislative acts. Every such act is *ipso facto* valid, whether it relates to the most trivial subject of ordinary legislation or to the organic arrangements of the state; and no person or body, aside from Parliament itself, has a right to override it or to set it aside.

The Rights of the Individual. — This raises the interesting question of the status of the individual citizen under the government. As has been pointed out by an American writer, there are three principal methods by which individual rights may be defined and guaranteed.[1] The first is specific enumeration in the constitution. This is distinctly the American method: our federal constitution and most of the state constitutions contain either formal "bills of rights" or articles tantamount thereto. The effect is to place the rights or liberties enumerated substantially beyond the power of the government to curtail. Theoretically there is advantage in this. Practically, however, there is some disadvantage, because changing conditions require that in the interest of justice individual rights shall from time to time be freshly defined. At least, new qualifications and limitations must occasionally be imposed. This readjustment can be made, of course, by amending the constitution. But constitutional amendments are difficult to procure, and rights once conceded in a constitution are extremely difficult to withdraw. "It is now the best legal opinion in the United States," says the authority mentioned above, "that, not only has the statement of these [individual] rights, in the absolute form in which they appear in the federal and state constitutions, led to an enormous amount of litigation, but that the hands of the governments have been seriously tied in their efforts to introduce legal and social reforms urgently demanded by the people themselves. So serious is the situation that it is almost impossible to enact any important social legislation without having its legal validity immediately challenged in the courts." [2]

[1] Willoughby, *Government of Modern States*, 151–157.
[2] *Ibid.*, 153.

A second plan, for which much can be said, is that of putting into the constitution a broad guarantee of individual rights, while yet endowing the government with power to introduce such definitions and restrictions as experience shows to be essential to the public well-being. This is the method of Switzerland, of Japan, and of China. Thus the Swiss constitution, instead of making a flat grant of freedom of the press, says that "the freedom of the press is guaranteed; nevertheless, the cantons, by law, may enact measures necessary for the suppression of abuses." [1]

England, France, and some other states follow, however, still a different method. They make little or no attempt to define individual rights in any organic instrument. It is true that several fundamental rights of Englishmen are solemnly guaranteed in such documents as the Habeas Corpus Act and the Toleration Act. It is true, also, that some of the best French constitutional lawyers hold that the individual rights enumerated in the Declaration of Rights of 1789, although not mentioned in the constitutional laws of 1875, have full force and sanction to-day.[2] Still, the fact remains that the omnipotent English Parliament is no more subject to legal limitations of power in dealing with individual rights than in dealing with anything else, and that even if the guarantees of 1789 be accepted as parts of the present French constitution, the government itself can amend this constitution and thereby work any change in the status of the individual that it desires.[3] Legally, therefore, the individual in England and France has no protection at all against the government, for the reason that the state which stands back of the government has not seen fit to impose restrictions of the kind with which we are familiar in the United States. The reason why it has not done so is that no such restrictions are needed; for we know that, practically, there are no parts of the world in which individual rights are more scrupulously respected than in the countries mentioned. The fundamental guarantee of these rights is the traditions and beliefs of the people; if these were not enough, others would before now have been provided.[4]

The Functional Distribution of Powers. — Powers of government can be distributed not only geographically but functionally.

[1] Art. 55.
[2] See L. Duguit, *Traité de droit constitutionnel* (Paris, 1911), II, 13.
[3] See p. 384.
[4] On the history of personal liberty in England, see May and Holland, *Constitutional History of England*, II, Chaps. ix–xiv.

Nothing is more natural than to put the exercise of different kinds of power in the hands of different organs of government; and in every government there is a certain amount of such distribution, just as there is of necessity a certain amount of distribution on a geographical basis. One reason for a functional distribution is practical convenience. The tasks of government are so numerous and onerous that they must be divided among many hands. A second consideration is the security of the public interests. No single governmental organ or group of organs, it is urged, should be endowed with so much power that it can become tyrannical; powers must be distributed among various agencies, which can be set to watch and check each other.

There are two ways in which this functional distribution may be accomplished. It may be ordained in the constitution under which a government operates, and therefore be beyond the control of the government itself. Or it may be left to be determined by the government, on such lines as it deems desirable. In the one case we have a government of a "separation of powers"; in the other, a government of a "union of powers." This distinction is, however, of legal rather than practical importance. There will always be some separation; and it is a curious fact that the state in which separation is perhaps carried farthest, *i.e.*, England, is almost the only one of importance which is organized legally on the principle of a union of powers. The cardinal feature of the English political system is the unlimited authority of Parliament. This body is free to keep in, or to take into, its own hands the exercise of any and all powers that it chooses and to distribute the remaining ones how and where it likes. All powers, accordingly, are, legally, united in it. Practically, however, it reserves to itself only the legislative function. It has never shown any inclination to take over executive functions, much less to busy itself with administration. The judiciary is notably independent. And while it is true that the same group of men, the cabinet ministers, act as the leaders in legislation, preside over the administrative services, and have custody of the executive powers of the crown — so that there may be said to be a *personal* union of powers — these dignitaries are always careful to keep their activities and relationships in the three capacities essentially distinct. This combination of functions in the same hands makes for harmony and expeditiousness without destroying the advantages that arise from a clear perception and application of the principle of

organic separation; therein, indeed, lies the great strength of the English system of government.

The United States, on the other hand, affords an example of a state whose government is legally a government of "separation of powers," yet practically is less fully organized according to that principle than is the English. The framers of the federal constitution, acting in the light of their own experience, and deeply affected by the ideas set forth in John Locke's *Two Treatises of Government*, Montesquieu's *Spirit of Laws*, and other political writings which were widely read in the eighteenth century, evolved a governmental system whose basic principle is the separation of executive, legislative, and judicial powers. Provisions for such separation were incorporated in the constitution itself; so that, unlike the situation in England, the separation is not a matter for the determination of the government. The authors of the new organic law had no intention, however, to put any branch of the government in a position of such independence that it could usurp authority or disturb the equilibrium. Hence they interposed a series of checks and balances which caused the executive branch to become partly legislative in function and the legislative branch partly executive in function; while they made no direct provision for an administrative branch at all. The curious consequence is that, although legally a government of separate powers, the government of the United States in reality operates rather less in accordance with that principle than does the government of England.

CHAPTER V

THE CROWN

HAVING observed the main aspects of the English constitution — its antiquity, its diversity of origins, its flexibility, and its elusiveness — we come now to consider the actual governmental system that operates under it. We may best begin with the great institutions that stand at the head and hold the system together, namely, kingship, the ministry, and the cabinet. Parliament, which in the final analysis is the most important part of the system, will be duly considered in later chapters.

Contrasts of Theory and Fact. — The government of the United Kingdom is in ultimate theory an absolute monarchy, in form a limited, constitutional monarchy, and in actual character a democratic republic. At its head stands the sovereign, who is at the same time the supreme executive, the source of all law, the fountain of justice and of honor, the "supreme governor" of the Church, the commander-in-chief of the army and navy, the conservator of the peace, *parens patriae* and guardian of the helpless and the needy. In law, all land is held, directly or indirectly, of him. Parliament exists only by his will. Those who sit in it are summoned by his writ, and the privilege of voting for a member of the lower chamber is only a franchise, not a right independent of his grant. The sovereign never dies; there is only a demise of the crown, *i.e.*, a transfer of regal authority from one person to another, and the state is never without a recognized head.

These assertions express with substantial accuracy the ultimate, historic theory of the place of the crown in the governmental system; for many centuries they were fully and literally true. Nowadays they have little or no practical bearing. The king is the supreme executive only in name; he has very little to do with the composition of Parliament, and nothing to do — except in form — with its sessions and proceedings; he occupies the throne only by national sufferance expressed through parliamentary enactment; he has no control over the army and very little over the Church; he makes no laws, levies no taxes, hears no cases, and renders no decisions. The crown is vastly important,

and its powers are extensive and steadily increasing; but the sovereign has receded into the background. How crown and sovereign, which once were identical, became separated, what the present difference between them is, and what place each fills in the governmental system will be taken up after we shall have described the more external aspects of the position which the monarch occupies.

Title and Succession to the Throne. — Since the Revolution of 1688–89 tenure of the English throne has been based exclusively upon the will of the nation as expressed in parliamentary enactment. The statute under which the succession is regulated to-day is the Act of Settlement, dating from 1701. It provided that, in default of heirs of William III and of Anne, the crown and all prerogatives thereto appertaining should "be, remain, and continue to the most excellent Princess Sophia, and the heirs of her body, being Protestants."[1] Sophia, a granddaughter of James I, was the widow of a German prince, the Elector of Hanover; and although in 1701 she was not first in the natural order of succession, she was first among the surviving heirs who were Protestants. It was in accordance with this piece of legislation that, upon the death of Anne in 1714, the throne fell to George I, son of the German Electress. The present sovereign, George V, is the eighth of the Hanoverian dynasty.[2] It would, of course, be entirely within the power of Parliament to repeal the Act of Settlement and to bestow the crown elsewhere; indeed, Parliament could, if it wished, abolish kingship altogether. Under the established rules of descent the sovereign's eldest son, who bears the title Prince of Wales,[3] succeeds when a vacancy arises. If he be not alive, the in-

[1] The text of the Act of Settlement is printed in Stubbs, *Select Charters*, 528–531, and Adams and Stephens, *Select Documents*, 475–479. As safeguards against dangers which might conceivably arise from the accession of a foreign-born sovereign the act stipulated (1) that no person who should thereafter come into possession of the crown should go outside the dominions of England, Scotland, or Ireland without consent of Parliament, and (2) that in the event that the crown should devolve upon any person not a native of England the nation should not be obliged to engage in any war for the defense of any dominions or territories not belonging to the crown of England, without consent of Parliament.

[2] After the outbreak of the Great War in 1914 the designation "Hanoverian dynasty" was formally discarded and the name "Windsor dynasty" was adopted in its stead. For a century and a quarter the sovereign of Great Britain was also the ruler of Hanover. At the accession of Queen Victoria in 1837, however, the union ended, because the law of Hanover forbade a woman to ascend the throne of that country. A. W. Ward, *Great Britain and Hanover; Some Aspects of the Personal Union* (Oxford, 1899).

[3] This title was created by Edward I in 1301. It carries no governmental authority.

heritance passes to his issue, male or female. If there be none, the succession devolves upon the late sovereign's second son, or upon his issue.

No Catholic may inherit, nor any one marrying a Catholic; and the act of 1701 prescribed that the sovereign should in all cases "join in communion with the Church of England as by law established." If after his accession the sovereign should join in communion with the Church of Rome, profess the Catholic religion, or marry a Catholic, his subjects would be absolved from their allegiance. It is required, furthermore, that the sovereign shall take at his coronation an oath abjuring the tenets of Catholicism. Until 1910 the phraseology of this oath, formulated in days when ecclesiastical animosities were still fervid,[1] was offensive not only to Catholics but to temperate-minded men of all faiths. An act of Parliament, passed in anticipation of the coronation of George V, made it, however, less objectionable. The new sovereign is now required merely to declare "that he is a faithful Protestant and that he will, according to the true intent of the enactments which secure the Protestant succession to the throne of the Realm, uphold and maintain the said enactments to the best of his power according to law."

The age of majority of the sovereign is eighteen. The constitutions of most monarchical states make provision for a regency in case of the sovereign's minority or incapacity. English practice, on the contrary, has been to provide for such contingencies when they arise. A regency can be created and a regent designated only by Parliament. Parliamentary enactments, however, become operative only upon receiving the assent of the crown, and it has sometimes happened that the sovereign for whom it was necessary to appoint a regent was incapable of performing any governmental act. In such a situation there has usually been resort to some legal fiction to save appearances. A Regency Act of 1811 defines the limits of the regent's powers and sets up safeguards for the interests of both the sovereign and the nation.[2]

[1] The words to be employed were originally prescribed in the Act for Establishing the Coronation Oath, passed in the first year of William and Mary. For the text see Robertson, *Statutes, Cases, and Documents*, 65–68. See A. Bailey, *The Succession to the English Crown* (London 1879).

[2] For the text of the Regency Act, as passed in view of the incapacitation of George III, see Robertson, *Statutes, Cases, and Documents*, 171–182. There is an excellent survey of the general subject in May and Holland, *Constitutional History of England*, I, Chap. iii.

Royal Privileges: the Civil List. — The sovereign enjoys large personal immunities. For his private conduct he cannot be called to account in any court of law or by any legal process. He cannot be arrested, his goods cannot be distrained, and as long as a palace remains a royal residence no sort of judicial proceeding against him can be executed in it. He, furthermore, may own land and other property, and may manage and dispose of it precisely as any private citizen. The vast holdings of property, however, which at one time formed the sovereign's principal source of revenue, have become the possession of the state, and as such are administered entirely under the direction of Parliament. In lieu of the income derived from land and other independent sources, the king has been given for the support of the royal household a fixed annual subsidy, the amount of which is determined afresh at the beginning of each reign. Prior to the Revolution of 1688–89 no distinction was drawn between the expenses of the government in time of peace and the outlays for the personal support and dignity of the sovereign. The money derived from the hereditary revenues of the crown, and from certain taxes voted for life to the king at the beginning of each reign, was supposed to provide for the king and his household, for the civil government, and for the upkeep of the armed forces in time of peace; in the event of war, special emergency grants were forthcoming. The king was free to use for his personal purposes as much of the general fund as he liked; at all events, anything that he could save in the expenditure upon the civil government and the military establishment went to swell his private purse. The evils of this system were very apparent under the later Stuarts, and it is not strange that at the reëstablishment of monarchy upon a new basis in 1688–89 the opportunity should have been seized to introduce a different arrangement.

The general principle adopted was that of allocating to the king a fixed annual sum, in return for which he should give up all rights of personal control over the remaining income of the state.[1] For more than a hundred years, however, this principle was not carried out fully and literally. Thus, the sum voted to William and Mary was £700,000; but out of it the sovereigns were to meet not only their personal expenses but the

[1] In the reign of Charles II Parliament began to appropriate money for specific purposes, and after 1688 this became the general practice. For a century the proceeds of particular taxes were appropriated for particular ends; but in 1787 Pitt simplified procedure by creating a Consolidated Fund into which all revenues were turned and from which all expenditures were met.

costs of the civil service and of pensions. That is to say, the sovereign continued to be expected to provide for various civil expenditures out of his allotment; and from the habit of enumerating the items thus chargeable on the king's funds arose the name Civil List, nowadays often applied directly to the subsidy itself. Originally, too, the sovereign retained important independent revenues. George III, however, surrendered his interest in many of these, and William IV gave up the balance.[1] On the other hand, the Civil List was gradually relieved from all the charges relating rather to the civil government than to the support of the dignity of the monarch and the royal household; so that strictly, the term "Civil List" is now a misnomer. At the accession of Victoria the Civil List grant was reduced from £510,000 to £385,000, but the sovereign was farther relieved of the pension list. In addition to annuities payable to the children of the royal family, the Civil List of Edward VII amounted to £470,000, of which £110,000 was appropriated to the privy purse of the king and queen, £125,000 to salaries and retiring allowances of the royal household, and £193,000 to household expenses. At the accession of George V, in 1910, the Civil List was continued in the sum of £470,000.[2]

"Crown" and "Sovereign." — Viewed from a distance, English kingship is imposing. The sovereign dwells in a splendid palace, sets the pace in rich and cultured social circles, occupies the center of the stage in solemn and magnificent ceremonies, makes and receives ostentatious visits to and from foreign royalty, and seems to exercise far-reaching powers of appointment, administrative control, military command, lawmaking, justice, and finance. Examined more closely, however, the king's position is found to afford peculiarly good illustration of the contrast between theory and fact which runs so extensively through the English governmental system. On the social and ceremonial side, the king is quite as important as the observer supposes him to be; indeed, his influence in these directions is commonly underestimated. But his control over public affairs — appointments, legislation, military policy, the Church, finance, foreign relations — is purely incidental. There was a time when his power in these great fields was practically absolute. It was certainly so under the Tudors, in the sixteenth

[1] Accuracy requires mention of the fact that, by exception, the sovereign still enjoys the revenues of the Duchy of Lancaster and the Duchy of Cornwall, the latter being part of the appanage of the Prince of Wales.

[2] On the history of the Civil List see May and Holland, *Constitutional History of England*, I, 152–175.

century. But the Civil War cut off large prerogatives, the Revolution of 1688–89 sundered many more, the apathy and weakness of the early Hanoverians cost much, and the drift against royal control in government continued strong, even under the good monarchs of the last hundred years, — until the king now finds himself literally in the position of one who "reigns but does not govern." Lawyers and students of political science continue to talk much about the powers of the crown; and long chapters upon the subject will be found in the books. This is all proper enough. The powers of the crown, under the English constitution, are numerous, vast, and of transcendent importance. The government could not run an hour if they were not exercised, and they are more extensive to-day than at any time in the past two hundred years. But the point is that the "crown" is no longer the king. If it be asked who or what the crown is, one may reply in the delightfully evasive phrase of Mr. Sidney Low that it is "a convenient working hypothesis;" [1] or one may be a little more definite by saying that it is, in a general way, the supreme executive agency in the government, — once actually the king alone, but now rather the ministers and their subordinates, with the king as a sort of fifth wheel to the wagon. When we say that the crown appoints practically all national public officers we mean that ministers, who themselves are selected by the king only in form, make these appointments. When the king attends the opening of a parliament and reads the Speech from the Throne, the message is one which has been written by these same ministers. "Government" measures are continually framed and executive acts performed in the name of the crown, though the king may personally be quite ignorant of them or even strongly opposed to them. Two principles, in short, reign supreme and give character to the entire governmental system: (1) the king shall perform no important public act involving the exercise of discretion except through the agency of the ministers, and (2) for every public act performed by or through them these ministers shall be fully responsible to Parliament. The king can "do no wrong," because all of the acts done by him or in his name are chargeable to a minister or to the ministry as a group. But that tends to mean that the king can do nothing; because ministers cannot be expected to shoulder responsibility for acts which they do not themselves originate or favor.

[1] *Governance of England* (new ed., 1916), 255.

The Real Authority and Service of the Sovereign. — It would be erroneous, however, to conclude that kingship in England is obsolete and unimportant, or even that the king has no real influence in the government. Americans are likely to wonder why an institution which seems so completely to have outlived its usefulness has not been abolished; and Englishmen are free to admit that if they did not actually have a royal house they would hardly set about establishing one. None the less, the uses served by the monarch are considerable; his influence upon the course of public affairs may, indeed, be great. In the oft-quoted phrase of Bagehot, the sovereign has three rights — the right to be consulted, the right to encourage, and the right to warn. "A king of great sense and sagacity," it is added, "would want no others."[1] Despite the fact that during upwards of two hundred years the sovereign has not attended the meetings of the cabinet, and hence is deprived of opportunity to wield influence directly upon the deliberations of the ministers as a body, he keeps in close touch with the premier, and cabinet meetings at which important policies are to be formulated are frequently preceded by a conference in which the subject in hand is threshed out more or less completely by king and chief minister. Merely because the ancient relation has been reversed, so that now it is the king who advises and the ministry that arrives at decisions, it does not follow that the advisory function is an unimportant thing.

Queen Victoria many times wielded decisive influence upon the public measures of her reign, especially in connection with the conduct of foreign relations. She called Lord Palmerston sharply to account in 1850 because the Foreign Office was not showing her due regard. "The Queen requires, first," — so ran the famous memorandum sent to her somewhat supercilious foreign secretary — "that Lord Palmerston will distinctly state what he proposes in a given case, in order that the Queen may know as distinctly to what she is giving her royal sanction. Secondly, having once given her sanction to such a measure, that it be not arbitrarily altered or modified by the minister. . . . She expects to be kept informed of what passes between him and the foreign ministers, before important decisions are taken based upon that intercourse; to receive the foreign dispatches in good time; and to have the drafts for her approval sent to her in sufficient time to make herself acquainted with the con-

[1] *English Constitution* (rev. ed.), 143.

tents before they must be sent off." [1] During the troubled later years of Louis Philippe the Queen practically prevented war between Great Britain and France; and on the advice of the Prince Consort, she, in 1860, caused Lord John Russell's peremptory dispatch on the *Trent* affair to be softened, and thereby quite possibly averted war with the United States.[2]

Edward VII, coming to the throne in 1901, when his country was suffering from unpopularity in Europe engendered by the South African war, contributed powerfully by his visits on the continent and by his entertainment of foreign dignitaries to the turn of events which brought England into a close understanding with France in 1904 and with Russia three years later. Furthermore — while the extent of his influence on domestic affairs is less measurable — he is known to have approved and encouraged the Haldane army reforms, to have sought to dissuade the House of Lords from rejecting the Lloyd George budget of 1909, and to have discouraged the raising, in any form, of the issue of the reorganization of the upper chamber. In other words, while as a constitutional monarch content to remain in the background of political controversy, this king not only had opinions but did not hesitate to make them known; and in the shaping and execution of the Liberal program his advice was undoubtedly at times a factor of importance. Unlike Queen Victoria, who seldom saw the ministers, but trusted rather to correspondence, King Edward was always accessible to the ministers and enjoyed discussing public matters in a direct and informal way with them.[3] His successor, George V, has been similarly active, in relation especially to the Irish question and to the issues of the Great War, even going so far upon one occasion as to call a conference of party leaders with a view to a compromise on the Irish situation.[4]

Why Monarchy Survives. — Monarchy in Great Britain is a strong and, so far as can be foreseen, a lasting institution. Through-

[1] T. Martin, *Life of His Royal Highness, the Prince Consort* (London, 1875–80), II, 306.

[2] The influence exerted by the successive sovereigns from George III to Victoria is described at length in May and Holland, *Constitutional History of England*, I, Chaps. i–ii.

[3] The most satisfactory estimate of the political and governmental activities of Edward VII is contained in Mr. Sidney Lee's memoir of the king, printed in the *Dictionary of National Biography*, Second Supplement (London and New York, 1912), I, 546–610. See also Viscount Esher, *The Influence of King Edward, and Essays on Other Subjects* (London, 1915).

[4] S. Brooks, "The King and the War," in *Nineteenth Cent.*, May, 1918; *London Times Illus. Hist. and Encyc. of the War*, Pt. 225 (1918).

out the tempestuous years 1909–11, when the nation was aroused as it had not been in generations upon the issue of constitutional reform, and when every sort of project was warmly advocated and as warmly opposed, without exception every suggested program took for granted the perpetuation of monarchy as an integral part of the governmental system. In the general bombardment to which the hereditary House of Lords was subjected hereditary kingship wholly escaped. The reasons are numerous and complex. They arise in part, although by no means so largely as is sometimes imagined, from the fact that monarchy in England is a venerable institution, and the innate conservatism of the Englishman, while permitting him from time to time to regulate and modify it, restrains him from doing anything so revolutionary as to abolish it. That upon certain conspicuous occasions, as in the Cromwellian period, and again in 1688, kingship has owed its very life to the conservative instinct of the English people is well enough known to every student of history. But to-day, as ever, the institution rests upon a basis very much more substantial than a mere national predilection.

Monarchy remains impregnably intrenched because it fulfills specific ends which are universally recognized to be eminently worth while, if not indispensable. As a social, moral, and ceremonial agency, and as a visible symbol of the unity of the nation, and especially of the Empire, king and court occupy an immeasurable place in the life and thought of the people; and even within the domain of government, to employ the figure of Lowell, if the crown is no longer the motive power of the ship of state, it is the spar on which the sail is bent, and as such it is not only a useful but an essential part of the vessel.[1] The entire governmental order of Great Britain hinges upon the cabinet system; and nowhere has that system been reduced to satisfactory operation without the presence of some central, but essentially detached, figure, whether a king or, as in France, a president with most of the attributes of kingship. It is because the English people have discovered that kingship is not necessarily incompatible with popular government that the monarchy has survived. If royalty had been found standing in the path of democratic progress, it is inconceivable that all the forces of tradition could have pulled it through the past seventy-five or eighty years. As it is, while half a century ago a small republican group was fond of urging that the monarchy was only a source

[1] *Government of England*, I, 49.

of needless expense, to-day there is hardly a trace of anti-monarchical sentiment in any section of society.

Before turning from this branch of our subject, let us consider what a scholarly English writer, Mr. Edward Jenks, has to say of the uses of kingship in his country. "In the first place," he writes, "the king supplies the vital element of personal interest to the proceedings of government. It is far easier for the average man to realize a person than an institution. Even in the United Kingdom, only the educated few have any real appreciation of such abstract things as Parliament, the cabinet, or even 'the crown.' But the vast mass of the people are deeply interested in the king as a person, as is proved by the crowds which collect whenever there is a chance of seeing him; and it is possible that the majority of the people, even of the United Kingdom, to say nothing of the millions of India, believe that the government of the Empire is carried on by the king personally. He therefore supplies the personal and picturesque element which catches the popular imagination far more readily than constitutional arrangements, which cannot be heard or seen; and a king or queen who knows how to play this part skillfully, by a display of tact, graciousness, and benevolence, is rendering priceless services to the cause of contentment and good government. . . . Very closely allied to this personal character of the king is the great unofficial and social influence which he wields, and not he alone, but the queen, and, in a lesser degree, the other members of the royal family. Their influence in matters of religion, morality, benevolence, fashion, and even in art and literature, is immense. . . . How much good was done in this way by the late Queen Victoria, is a matter of common knowledge; it was one of the striking triumphs of her long reign. And, be it remembered, in such matters the monarch is in no way bound to follow, or even to seek, the advice of his ministers; for such matters lie outside the domain of politics. . . . A king who is fully informed of affairs becomes, in course of time, if he is an able man, an unrivaled storehouse of political experience. Ministers come and go; they are swayed, it is to be feared, by the interests of their party as well as by those of the state; they may have had to make, in order to obtain support, bargains which tie their hands; they have ambitions for the future, which they are loath to jeopardize. Not so the king. He is permanent; he is above all parties; he does not bargain for places and honors; he has nothing in the way of ambition to satisfy, except the noble ambition of securing his country's

welfare. So he can say to his ministers, with all the weight of his experience and position: 'Yes, I will, if you insist, do as you wish; but, I warn you, you are doing a rash thing. Do you remember so and so?' Only, the king must not give his warning in public; he must not *seem* to overrule his ministers. But a minister will, unless he is an exceptionally rash person, think many times before disregarding a warning from the king." [1]

Powers of the Crown: Sources and Development. — It has been stated that the powers of the crown are numerous, vast, and of transcendent importance, and it has been explained that whereas they were once exercised fully and freely by the king himself, nowadays they rest in the hands of the ministers, who wield them with practically no restraint from the nominal ruler. It remains to point out how these powers arose, how they change from generation to generation and almost from year to year, and what they are at the present time. In the succeeding chapter, the nature of the authority that carries them into effect, *i.e.*, the ministry, will be duly considered.

Speaking broadly, the powers of the crown are of dual origin: custom, or "prerogative," and parliamentary definition or grant. Powers of a statutory character are, as a rule, definite and easily measurable. But those that flow from the prerogative are in many cases difficult to bring into clear view. The prerogative is defined by Dicey as "the residue of discretionary or arbitrary authority which at any time is legally left in the hands of the crown." [2] The elements of it are to be ascertained, not from statutes but from precedents, and its sources, as enumerated by Anson, are (1) the residue of the executive power which the king in the early stages of English history possessed in all of the branches of government; (2) survivals of the power once accruing to the king as the feudal chief of the country; and (3) attributes with which the crown has been invested by legal theory, *e.g.*, the attribute of perpetuity popularly expressed in the aphorism "the king never dies," and that of perfection of

[1] *Government of the British Empire*, 37–40. The best brief discussions of the position of the sovereign in the governmental system are Lowell, *Government of England*, I, Chap. i; Moran, *English Government*, Chaps. ii–iii; Marriott, *English Political Institutions*, Chap. iii; and Low, *Governance of England*, Chaps. xiv–xv. More extended treatment of the subject will be found in Anson, *Law and Custom of the Constitution*, II, Pt. i, Chaps. i and iv; Todd, *Parliamentary Government in England*, I, Pt. ii; and Bagehot, *English Constitution*, Chaps. ii–iii. Mention may be made of N. Caudel, "Le souverain anglais," in *Ann. des Sci. Polit.*, July, 1910, and J. Bardoux, "Le pouvoir politique de la couronne anglaise," in *Rev. des Deux Mondes*, May 15, 1911.

[2] *Law of the Constitution* (7th ed.), 420.

judgment, similarly expressed in the saying "the king can do no wrong."[1] The element in the prerogative which bulks largest is undoubtedly that which Anson mentions first, *i.e.*, the power which the king carried over, in the teeth of the popularization of the governmental system, from days when the royal authority was not hedged about as it has been since the seventeenth century. It is further to be observed that many powers of the crown as they exist to-day represent original prerogative modified by parliamentary enactment; so that in many instances it becomes difficult to determine whether a given power exists by virtue of a statute, by which it is absolutely defined, or by virtue of an anterior prerogative, which may be capable of being stretched or interpreted more or less arbitrarily. No principle of the working constitution is more solidly established than that the prerogative of the crown may be defined, restricted, or extended by act of Parliament.

From what has been said it follows that the powers of the crown are in constant flux: they are always, and at the same time, being diminished and increased. Historically, they have been reduced in three principal ways. The first is great contractual agreements between king and people, best illustrated by Magna Carta and the Petition of Right. The second is prohibitive legislation, of such character as that which put an end to suspending or dispensing with laws, debasing the coinage, purveyance, preëmption, and many other prerogatives. The third is simple disuse, illustrated by the lapse, since the Tudor period, of the power of the crown to add to the membership of the House of Commons by arbitrary enfranchisement of boroughs. On the other hand, the crown's powers have been steadily augmented both by custom and by legislation, particularly, in recent centuries, the latter. When, for example, Parliament adds an air service to the army, establishes a system of old age pensions, or authorizes a new tax, it imposes fresh duties of administration upon the crown and thereby perceptibly enlarges the volume of its power; or the grant may look to the exercise of legislative rather than executive functions, by means of the device of "statutory orders," to be presently explained. It is mainly on account of the enormous expansion of the functions and activities of government in the nineteenth and twentieth centuries, entailing steady accessions of power, that Lowell is able to conclude his discussion of this subject with the following striking words: "All told, the executive authority of the crown

[1] *Law and Custom of the Constitution*, II, Pt. i, 3–5.

is, in the eye of the law, very wide, far wider than that of the chief magistrate in many countries, and well-nigh as extensive as that now possessed by the monarch in any government not an absolute despotism; and although the crown has no inherent legislative power except in conjunction with Parliament, it has been given by statute very large powers of subordinate legislation. . . . Since the accession of the House of Hanover the new powers conferred upon the crown by statute have probably more than made up for the loss to the prerogative of powers which have either been restricted by the same process or become obsolete by disuse. By far the greater part of the prerogative, as it existed at that time, has remained legally vested in the crown, and can be exercised to-day." [1]

Powers of the Crown Classified. — The powers of the crown to-day fall into two principal groups, according as they are executive or legislative. Nothing less than a chapter would serve to enumerate and explain the executive powers in all of their ramifications. It must serve, however, to say that the most important of them are: (1) appointment, directly or indirectly, of all national public officers, except some of the officials of the parliamentary chambers and a few unimportant hereditary dignitaries; (2) removal, upon occasion, of all appointed officers except judges, members of the Council of India, and the Comptroller and Auditor General; (3) execution of all laws and supervision of the executive machinery of the state throughout all of its branches; (4) expenditure of public money in accordance with appropriations voted by Parliament; (5) granting, in so far as not prohibited by statute, of charters of incorporation; (6) creating of all peers and conferring of all titles and honors; (7) coining money; (8) summoning of Convocation and, by reason of the king's headship of the Established Church, virtual appointment of the archbishops, bishops, and most of the deans and canons; (9) supreme command of the army and navy; (10) representing the nation in all of its dealings with foreign powers, including the appointment of all diplomatic and consular agents and the negotiation of treaties; [2] and (11) supervision or

[1] *Government of England*, I, 26.

[2] There is no question of the power of the crown to negotiate treaties; their ratification and execution is a different matter. Prior to the Great War, Parliament had little to do, directly, with treaty-making. It might refuse to vote supplies, or it might pass resolutions condemning the Government's policy. But unless, as in the case of the Anglo-German convention of 1890 ceding Heligoland and the Anglo-French convention of 1904 relating to Morocco and Egypt, a treaty contained an express provision for its submission to Parliament, ratification was usually by the Government, *i.e.*, the ministry, itself, not by the two houses. Even

control over local government, education, public health, pauperism, housing, and a wide variety of other social and industrial matters.

A second general group of powers pertains to legislation. Technically, all legislative authority is vested in "the king in Parliament," which means the king acting in collaboration with the two houses. Parliament transacts business only during the pleasure of the crown. The crown summons and prorogues the houses, and it can at any time dissolve the House of Commons. No parliamentary act, furthermore, is valid without the crown's assent.

It is, none the less, on the legislative, rather than the executive, side that the greatest losses of the crown have been suffered. There was a time, before the rise of Parliament, when the crown possessed practically unlimited law-making power. As Parliament gradually gathered strength, the legislative self-sufficiency of the crown was undermined. For a long time after the general principle of parliamentary control over legislation was established, the crown clung to the right of issuing proclamations and ordinances with the force of law. But after the Tudor period, even this prerogative had to be given up. Nowadays the crown has, apart from Parliament, no inherent legislative power whatever, save in the crown colonies.[1] It cannot independently suspend or dispense with laws; it cannot alter them in the slightest particular; it is practically obliged to approve and accept every law passed by Parliament;[2] and it cannot itself make law. It is true that great numbers of ordinances — "orders in council" — continue to be promulgated. But these involve no infraction of the general rule. Orders in council are of two kinds. The first is orders which are in the nature of administrative rules or instructions, pre-

treaties involving (as did the treaty of Paris in 1783) cessions of territory were handled in this manner. It is therefore noteworthy that the treaty with Germany drawn up at Paris in 1919 was laid before Parliament in its entirety, and that only after being explained, debated, and voted upon there was the king's signature attached and ratification notified to the world. There is a strong presumption that Parliament's control over treaty-making has thus been permanently augmented. Cf. p. 80 below.

[1] H. Jenkyns, *British Rule and Jurisdiction Beyond the Seas* (Oxford, 1902), 4–6, 95.

[2] The power to withhold assent from a measure passed by Parliament has not been exercised since 1707, when Queen Anne vetoed a bill for settling the militia in Scotland. Under the cabinet system of government there is no need of a formal veto power, and it is a debatable question whether this prerogative may not be regarded as having been extinguished by disuse. But see Lowell, *Government of England*, I, 26, and "Auditor Tantum," "The Veto of the Crown," in *Fortn. Rev.*, Sept., 1913.

scribing in detail the methods by which the government's business shall be carried on. A good example is afforded by the inland revenue regulations, or the rules governing examinations for the civil service. These orders, being mere administrative regulations and not laws, can be, and are, promulgated by the crown independently. The second kind of orders comprises such as have the character of true law. These, also, are promulgated by the crown, — to be entirely accurate, by the crown in council — but only by virtue of authority expressly conferred by Parliament. Accordingly, they are known as "statutory orders." Some of these orders take effect at once and are later reported to Parliament merely as a matter of form; others are suspended for a period to allow Parliament an opportunity to disallow them if it chooses. In any event, they partake of the character of legislation — "a species of subordinate legislation," Lowell terms them. But the point is that in issuing them the crown acts entirely by delegated, not inherent, authority.

CHAPTER VI

THE MINISTERS AND THE ADMINISTRATIVE SYSTEM

Composition of the Ministry. — It has been made clear that the vast and growing powers of the crown are no longer wielded by the sovereign in person. Rather, they are exercised by ministers whom he does not choose (except in form) and over whose acts he has no positive control. The ministry therefore becomes the actual working executive, or at all events the directing and controlling part of the executive; and as such it includes the heads of all principal departments, some or all of the members of various boards, a considerable group of under-secretaries (assistant secretaries, we should call them in the United States [1]), certain party "whips," a few officers of the royal household, and some dignitaries who really have little or no administrative work to perform. Nominally they are selected and appointed by the king; but actually they owe their positions to the chief, or "prime," minister, whose highly important functions will be described presently. The thing that chiefly distinguishes a minister from any other member of the executive service is his direct responsibility to Parliament; and the ministry may be defined as the group of higher executive officials who are obligated by rigorous custom to resign office if Parliament (strictly speaking, the House of Commons) deliberately withholds approval of their policy. The ministers may therefore be said to have a *political* character not possessed by the mass of the executive and administrative officers, who belong rather to the permanent civil service and are not affected in their tenure by the ups and downs of party politics. The number of ministers in the years immediately preceding the Great War fluctuated around sixty. Approximately one third of them formed the inner circle known as the cabinet, whose importance is such that it will be dealt with at length in a succeeding chapter. During the war period many new ministries were created, and although

[1] The term "under-secretary" has, however, been introduced in this country. An Under-Secretary of State was provided for by act of Congress in 1919.

some have already been abolished, it is probable that the group will become permanently from a fourth to a third larger than in 1914.[1]

As is true in all governments, the work of administration is directed and carried on mainly in certain great executive departments; and most of the ministers — although with some very important exceptions — are in charge of, or otherwise attached to, these departments. In the United States, the ten executive departments of the federal government stand on a common footing and bear much resemblance one to another. All have been created by act of Congress; all are presided over by officials known as secretaries; all stand in substantially the same relation to the president and to Congress. The executive departments in most continental governments likewise present a generally logical and symmetrical appearance.[2] The English departments, however, are very heterogeneous. In practically all cases, it is true, they are actually presided over by a single responsible minister, assisted by one or more under-secretaries and by a greater or lesser body of non-political officials who carry on the routine work and whose tenure is not affected by the political fortunes of their chiefs. But some of the departments, notably the Treasury and the Admiralty, represent survivals of the great offices of state of earlier centuries; six, *i.e.*, Foreign Affairs, Home Affairs, War, Colonies, India, and Air, are offshoots of the ancient "secretariat of state"; some, as the Board of Trade and the Board of Education, have sprung from committees of the Privy Council; still others are ministries, boards, or commissions established outright in recent decades, such as the Board of Works and the Board of Agriculture of a generation ago and the Ministry of Health and the Ministry of Transport created at the close of the Great War. There is no less diversity of organization than of origins, and no description can be undertaken save of the principal departments one by one.[3]

The Treasury. — The oldest department, the one that exercises largest control over the others, and by far the most important of them all, is the Treasury. The origins of the Treasury are to be sought in the Exchequer, or revenue office, of the Norman kings, which in the twelfth and thirteenth centuries gradually passed into the hands of a special official, the

[1] See p. 86.

[2] On the French executive departments see p. 400.

[3] A convenient outline of the administrative system is R. H. Gretton, *The King's Government; a Study of the Growth of the Central Administration* (London, 1913).

Treasurer, later designated the Lord High Treasurer.[1] By Tudor times, the Lord Treasurer was a very powerful official, and in 1612 James I tried the experiment of putting the office "in commission"; that is, he bestowed it, not upon an individual, but upon a board of Lords Commissioners of His Majesty's Treasury, with, however, a certain primacy in the "First Lord." The last Lord High Treasurer was appointed by Queen Anne, in her expiring moments, in 1714; and from that date the office has continuously been in commission. The duties connected with it are assigned to a Treasury Board of five members, and even the title of Lord High Treasurer has become extinct. For a time the sovereign attended meetings of the Board, but George III abandoned the practice, and control passed into the hands of the First Lord, who was usually also the prime minister.

The nineteenth century brought farther important developments. After 1825 the Board gradually ceased to transact business in a collective capacity, and nowadays it never meets. In 1849 an act of Parliament provided that documents, including requisitions for money, issuing from the Treasury should be regarded as valid if signed by any two of the five Lords. Furthermore, the Chancellor of the Exchequer, an official (dating from the thirteenth century) who had been gradually gaining in importance, now rose to second rank nominally, and first rank actually, in the department. To-day, therefore, the situation is substantially this. The First Lord, the nominal head, is, as a rule, the premier. He has actual control over several outlying departments which have no political chiefs of their own, but only such control over financial work as his general responsibilities as head of the Government of the day entail. The Chancellor of the Exchequer draws up the annual budget, embodying a statement of the proposed expenditures of the year and a program of taxation calculated to produce the requisite revenue, and performs other important functions of the Treasury, being also, as a rule, the Government leader in the House of Commons if the prime minister is in the House of Lords or unable to act. Curiously enough, however, he is no longer in charge of the Exchequer. Rather, the Exchequer and Audit Department, which directly supervises the collection of

[1] The workings of the early Exchequer are described in the *Dialogus Scaccario* ("Dialogue of the Exchequer"), written by Bishop Richard of London in the twelfth century. There is an edition of this treatise by A. Hughes, C. G. Crump, and C. Johnson (Oxford, 1902). The standard history is T. Madox, *History and Antiquities of the Exchequer* (London, 1711).

the revenue and the disbursement of money, is presided over by the Comptroller and Auditor-General; and the department is not strictly a part of the Treasury at all, the functions of the latter, as discharged by the misnamed Chancellor of the Exchequer, being direction and policy-framing, not actual administration.

Subordinate to the Treasury are the four great offices through which revenue is collected, *i.e.*, the Post Office, Customs, Inland Revenue, and Woods, Forests, and Land Revenues. The Post Office is presided over by a responsible minister, who is sometimes included in the cabinet; the other services are in the hands of boards of commissioners, whose members belong to the permanent civil service and are represented in Parliament only by the Chancellor of the Exchequer or his deputy, the Financial Secretary to the Treasury. A number of outlying departments whose supervision is not otherwise provided for are to some extent subject to Treasury control.

Formerly the proceeds of various taxes were paid into separate accounts at the Exchequer, and Parliament charged particular outlays upon each. This system was wasteful and otherwise unsatisfactory; one fund might be inadequate to meet the charges upon it while another had a large balance. An act of 1787 introduced a new and better plan. Under it, all revenues from every source are payable into a single Consolidated Fund at the Banks of England and Ireland, to the account of the Exchequer;[1] and all disbursements on the national account are made out of this fund. Most of the taxes are imposed by "permanent" statutes, which stand unchanged for considerable periods of time; but some are laid afresh each year, or at all events are subject to an annual revision of rates. Similarly, some expenditures are regulated by standing laws and others by annual appropriations. Most disbursements fall in the latter category; only those which it is particularly desirable to keep out of politics, *i.e.*, the Civil List, the salaries of judges, the interest on the national debt, and other outlays aggregating, before the Great War, something less than one fourth of the total expenditure, are "Consolidated Fund charges," paid directly out of the Fund without annual authorization. Expenditures which are voted from year to year are said to be for the "supply services," because the appropriations are made

[1] In Scotland the custodianship is passed around from year to year among six banks. For certain slight modifications of the plan, introduced in recent years, see Lowell, *Government of England*, I, 116.

by the House of Commons in Committee of Supply, which is a form of committee of the whole. It is the business of the Comptroller and Auditor-General to see that all expenditures have been authorized by Parliament. On receiving an order duly approved by this official, the Bank of England or Ireland allows the Treasury to draw for the amount, and as a rule the money is turned over to a minister known as the Paymaster-General for distribution to the proper departments. There are, of course, arrangements for audits.[1]

The Fighting Services. — A second ancient office which survives only in commission is that of Lord High Admiral. The navy is the oldest of the present fighting forces of the realm of a professional character, and the Lord High Admiral's office originated as early as the fourteenth century. By the seventeenth century the holder of this position was a man of great power, and Charles I agreed with the parliamentary party that it was expedient to put the office in commission. The arrangement was regularized in 1690, and it has been in effect continuously since 1708.[2] Since 1832 naval administration, formerly shared by many boards and other agencies, has been wholly in the hands of the "Lords Commissioners for executing the office of Lord High Admiral," otherwise known as the Admiralty Board.

The Admiralty Board now consists of a First Lord, four or more Naval Lords, and one or more Civil Lords; besides a parliamentary, a financial, and a permanent secretary. The First Lord, the Civil Lord, and the parliamentary secretary are invariably members of Parliament; the financial secretary may be a member; and the First Lord always has a seat in the cabinet. The Naval Lords are eligible to Parliament, but usually are not members. The permanent secretary is ineligible. Unlike the Treasury Board, which never meets, the Admiralty Board holds regular and frequent sessions. Legally, all members

[1] On the handling of finance bills in Parliament see p. 189. The best brief account of the Treasury is Lowell, *Government of England*, I, 115–130. See also Anson, *Law and Custom of the Constitution*, II, Pt. i, 173–190, and Dicey, *Law of the Constitution*, Chap. x. Financial procedure is well described in C. Ilbert, *Legislative Methods and Forms* (Oxford, 1901), 284–299. The budget system is described, with much comparison, in R. Stourm, *The Budget*, trans. by T. Plazin, ski (New York, 1917). W. F. Willoughby, W. W. Willoughby, and S. M. Lindsay-*Financial Administration of Great Britain* (New York, 1917), is a scholarly treatise; and the subject is adequately covered in H. Higgs, *Financial System of the United Kingdom* (London, 1914), and E. Young, *System of National Finance* (London, 1915).

[2] Except in 1827–28, when the Duke of Clarence, later William IV, was Lord High Admiral.

are on a common footing and the First Lord is only a chairman. Actually, the First Lord has enjoyed a substantial primacy since 1832, and under orders in council of 1869 and 1872 he bears sole responsibility before Parliament for all business transacted. This being the case, his word governs. If his colleagues are unwilling to accept his decisions, they have the option of resigning; or the First Lord may himself resign, which automatically dissolves the Board. Practically, therefore, the First Lord has become a minister of marine assisted by an advisory council. The Naval Lords, being naval officers, usually of high rank, give most of their time to the administrative services of the department, and certain branches are assigned also to the Civil Lord and the secretaries.[1]

Six of the great departments to-day are the product of a curious evolution of the ancient secretariat of state. Originally there was but a single official who bore the designation of secretary of state. In the earlier eighteenth century a second official was added, although no new office was created. At the close of the century a third was added, after the Crimean War a fourth, after the Indian mutiny of 1857 a fifth, and during the Great War a sixth. There are now, accordingly, six "principal secretaries of state," all in theory occupying the same office, and each, save for a few statutory restrictions, legally competent to exercise the functions of any or all of the others. In practice each of the six holds strictly to his own domain. The group comprises: (1) the Secretary of State for the Home Department; (2) the Secretary of State for Foreign Affairs; (3) the Secretary of State for the Colonies; (4) the Secretary of State for War; (5) the Secretary of State for India; and (6) the Secretary of State for Air.[2]

The organization of the War Office has never been as satisfactory as that of the Admiralty, and in the half-century prior to the Great War it was the subject of numerous inquiries, criticisms, and reports. The subject is too extensive and technical to be entered into here, but a few salient facts may be mentioned.[3] In the first place, as Lowell has aptly observed,

[1] J. R. Thursfield, "The Board of Admiralty," in *Quar. Rev.*, Dec., 1914, and Jan., 1915.

[2] To these may, perhaps, be added the office of Secretary for Scotland, established in 1885 and reconstructed practically on the basis of a secretaryship of state during the Great War. For an official account of the creation of the Ministry of Air see *Report of the War Cabinet for 1918* (Cd. 325, 1919), Chap. vii.

[3] Adequate brief discussions are Lowell, *Government of England*, I, 93–105, and Jenks, *Government of the British Empire*, 171–195. Cf. C. E. Callwell, "The War Office in War Time," in *Blackwood's Mag.*, Jan., 1919.

like other countries with a popular form of government, England has found it hard to reconcile military command and civil control. A great amount of English political history centers around the efforts of Parliament, from the fourteenth century onwards, to hedge about with effective, yet not entirely prohibitive, restrictions the power of the crown to raise, pay, and use armed forces. This end was partially achieved in the Bill of Rights, which to this day makes it unlawful for the crown to raise or keep a standing army within the kingdom, in time of peace, "unless it be with the consent of Parliament." Operating to the same effect was the annual Mutiny Act, which from 1689 suspended for one year various provisions of the Petition of Right and the Bill of Rights that stood in the way of the maintenance of an army, and which from 1712 also fixed definitely the number of soldiers that the crown might lawfully raise.[1] Full parliamentary supremacy came only, however, after the Crimean War, when the War and Colonial offices were separated and the Secretary of State for War (dating from 1793) was vested with control of the army and with full responsibility, as a cabinet officer, to Parliament. In 1904, following the unsatisfactory experiences of the South African War, the office of commander-in-chief, which had long been an obstacle to unified control by the Secretary for War, was abolished; and while the administration of military affairs was vested in a new body, the Army Council, consisting of three ministers in the War Office and four professional officials of high rank, unity of control and the complete supremacy of Parliament were, in effect, maintained by provisions making the Secretary for War president of the Council and giving the latter a function which, in the final analysis, is only advisory, and therefore like that of the First Lord's colleagues in the Admiralty. Under the supreme test of the Great War, the system yielded satisfactory results.

The Foreign and Home Offices. — The management of relations with foreign states falls to the Secretary of State for Foreign Affairs, aided by a parliamentary under-secretary, a permanent under-secretary, several assistant under-secretaries, and a considerable staff of clerks and other subordinates. The operations

[1] In 1881 the great mass of military law representing the by-product of upwards of two hundred Mutiny Acts was consolidated in the Army Act; and it is this Army Act that is nowadays reënacted or revived every year, in lieu of the original Mutiny Act of William III. The measure continues to be commonly referred to, however, as the Mutiny Act. Cf. the clause of the Constitution of the United States (Art. I, § 8) which forbids Congress to appropriate money if designed for the raising and supporting of armies, "for a longer term than two years."

of the department cover practically the entire world, and are carried on partly by direct correspondence, but mainly through the agency of ministers, ambassadors, and other diplomatic officers and of consuls and consular representatives of various grades. There is comparatively little work of a purely administrative nature. The protection of the interests of British subjects abroad and the cultivation of British commercial success beyond seas involve a certain amount of routine. But, in the main, the Foreign Office is engaged upon tasks — correspondence with foreign governments, preparation of instructions for diplomats, negotiation of treaties — which are difficult, delicate, and at times dangerous. It knows many things and does many things which the well-being of the country forbids to be made public. From this it follows, first, that a far larger proportion of decisions and actions emanate from, or at all events are specifically approved by, the chief official of the department than in departments whose work is more largely administrative, and, second, that the department is more detached, and even more immune, from parliamentary control, than any of the others. All of the threads are gathered tightly in the Foreign Secretary's hands. Parliament can promote or thwart foreign policies by granting or withholding funds; a foreign minister whose acts or policies are disliked can be got rid of by an adverse vote in the House of Commons on a party measure; and the ministers are expected to keep the houses informed on foreign affairs. Furthermore, while in times past it has not been considered that treaties must be ratified by the houses in order to be binding, a rule to the opposite effect seems clearly to have established itself. Normally, however, the Foreign Office functions without much interrelation with Parliament.[1] On the other hand, every successful foreign minister keeps his chief, the premier, fully informed, and important questions that arise within his domain are certain to be made the subject of cabinet discussion.[2] The sovereign, too, is freely

[1] See p. 70. The subject is dealt with on comparative lines in "Treatment of International Questions by Parliaments in European Countries, the United States, and Japan," *Brit. Parl. Papers, Misc.*, No. 5 (1912), and in D. P. Myers, "Legislatures and Foreign Relations," in *Amer. Polit. Sci. Rev.*, Nov., 1917. A standing House of Commons committee on foreign relations is advocated in T. Barclay, *Collapse and Reconstruction* (Boston, 1919), 52–53.

[2] "A considerable amount of fault has been found with what some people think is and what they call my foreign policy, but which, of course, ought not to be called my foreign policy, because it is quite impossible for any individual foreign minister to carry out a policy which is not also, in its main lines, the policy of the cabinet of which he is a member." Sir Edward Grey, quoted in *London Times* (Weekly ed.), Jan. 26, 1912, p. 71.

consulted, and more frequently wields influence here than in any other part of the governmental system.

The Home Office is, in the expressive words of Lowell, a "residuary legatee"; that is to say, it has such of the functions of the ancient secretariat (with some newer ones) as remain after the specific assignments made to the other secretaries and to miscellaneous departments. It has to do exclusively with domestic affairs. Yet it is not like a continental ministry of the interior, whose principal function is the supervision of local government. Nor has it much in common with the federal Department of the Interior in the United States. Ignoring many minor activities, the work of the Home Secretary and his assistants consists in (1) receiving and transmitting petitions to the crown; (2) preparing and countersigning the warrants, or orders, to which the sovereign affixes his "sign-manual," or personal signature; (3) administering the naturalization laws; (4) governing the Channel Islands and the Isle of Man; (5) controlling the police establishment of metropolitan London; (6) inspecting the police elsewhere throughout the United Kingdom and issuing certificates which alone entitle the county and borough authorities to national aid in the maintenance of their several police systems;[1] (7) approving the arrangements for the "assizes," or circuits, of the judges; (8) advising the sovereign upon the exercise of the power of pardon; (9) managing the national and local prisons; (10) appointing the Director of Public Prosecutions;[2] and (11) by virtue of special statutes, seeing to the enforcement of miscellaneous welfare and remedial legislation.

The Lord High Chancellor and the Law Officers of the Crown. — There is in England no department of justice, and no single officer performs the duties of a continental minister of justice or of an American attorney-general. The work is done, but it is divided among several officials, who have but little contact one with another. Most prominent and important among these officials is the Lord High Chancellor. "The greatest dignitary," says Lowell, "in the British government, the one endowed by law with the most exalted and most diverse functions, the only great officer of state who has retained his ancient rights, the

[1] The subvention allowed by the national government amounts to one half of the total outlay on the police establishment in all areas where the Home Secretary is willing to certify that the establishment is in a satisfactory condition. On the police establishment see *Report of the Committee on the Police Service of England, Wales, and Scotland.* Cd. 253, 1919.

[2] See Lowell, *Government of England*, I, 134–135.

man who defies the doctrine of the separation of powers more than any other personage on earth, is the Lord Chancellor."[1] Here again we come upon an office of great antiquity. Originally — as far back as the eleventh century — the Lord High Chancellor was merely the king's chief scribe; the name is said to be derived from the *cancelli*, or screen, in the king's chapel behind which the scribes carried on their work. In time, however, he became a trusted adviser, especially in matters touching the exercise of the royal "grace," *i.e.*, the redress of grievances for which the common law made no provision;[2] and by the sixteenth century, when Sir Thomas More appears as the first lay holder of the office, he was an imposing figure as the dispenser of "equity" in the Court of Chancery. From the first he was the custodian of the royal seal, and every writ or proclamation of the king had to pass through his hands. Furthermore, his primacy in the Court of Chancery brought him large judicial patronage; and when the judicial reforms of 1873–76 fused the organization of the common law and equity courts,[3] control over appointments to practically all important judicial positions passed into his hands. Meanwhile he gathered still other important functions and became a leading member of the cabinet. So that, nowadays, the work of this remarkable dignitary runs somewhat as follows: he is the chief judge in the High Court of Justice and in the Court of Appeals; he is the legal member of the cabinet and he gives his colleagues expert advice, although he is not officially the ministers' legal adviser; he recommends for appointment to higher judicial positions, and in fact, though not in form, appoints and removes the county court judges and most of the justices of the peace; he presides in the House of Lords; he affixes the Great Seal to documents that require it; he approves the regulations relating to public prosecutions; and he, of course, sits as a member of the cabinet and participates in the deliberative and advisory work of that body. He does not, properly, administer a department. But his activity and influence continually touch every branch of government at some vital point.[4]

[1] *Government of England*, I, 131.

[2] Jenks, *Government of the British Empire*, 220. See Maitland and Montague, *Sketch of English Legal History*, 120–128.

[3] See p. 210.

[4] It is to be observed that he is Lord High Chancellor not only of England but of Great Britain. There is a separate Lord High Chancellor for Ireland. On the Lord High Chancellor's office see H. Graham, *Mother of Parliaments* (London, 1910), Chap. vi.

To a considerable extent, the functions of the American Attorney-General are performed in England by an officer of the same title, and by his colleague and substitute, the Solicitor-General. The Attorney-General and the Solicitor-General are known as the "law officers of the crown." They are members of the ministry (though rarely of the cabinet), and are selected from among the most eminent barristers belonging to the party in power. One of their two principal duties is to give legal advice to the cabinet, and to the several departments; although, as in the United States, most of the departments have legal advisers on their own staff whose opinions suffice upon all save the largest matters. Their other, and perhaps primary, duty is to represent the crown in legal proceedings, especially in important criminal and political trials.[1]

The Regulative Boards. — Another interesting group of departments is made up of certain regulative boards and commissions, most of them of comparatively recent origin. They are frequently referred to as administrative boards. This, however, is somewhat misleading, because, in the main, their work consists, not of direct administration, but of supervision and regulation of private organizations and of local authorities. At the head of each board is a president (save that the chief of the Board of Works is known as First Commissioner), and in each instance the members include the secretaries of state and certain other important persons. This membership, however, is only nominal. No one of the Boards actually meets, and the work is performed entirely by the president and his staff, with, in most instances, the assistance of a parliamentary under-secretary. "In practice, therefore, these boards are legal phantoms that provide imaginary colleagues for a single responsible minister." As a rule, the presidents are admitted to the cabinet circle.

The oldest is the Board of Trade, traceable to the times of Cromwell, constituted a committee of the Privy Council in 1782, and put on a statutory basis in 1862. Until three quarters of a century ago, the work of this Board consisted mainly in gathering commercial statistics and advising other departments on commercial matters. The enormous expansion of government regulation of industry in later decades has, however, brought many new and important functions. The Board still collects

[1] See Lowell, *Government of England*, I, 134–135, for an explanation of the methods of prosecution in England, and for an account of the work of the Director of Public Prosecutions.

and publishes statistics and other information on foreign and domestic trade, and likewise on labor, wages, and other industrial subjects. But it also maintains a register of all British ships, makes and executes regulations for the safety of merchant vessels, provides and maintains lighthouses, controls harbors, supervises the Patent Office, maintains standards of weights and measures, acts as an agency of conciliation in labor disputes and appoints arbitrators and conciliators, administers the law of bankruptcy, and grants provisional orders empowering borough councils to undertake the ownership or operation of tramways, gas plants, waterworks, and other public utilities.[1] As this lengthy and by no means exhaustive list suggests, the Board's functions are very numerous and its importance is steadily increasing; although most of its former duties pertaining to railroads and highways have been transferred to the Ministry of Transport established in 1919.[2]

A second great regulative commission is the Board of Education. Prior to the nineteenth century, facilities of elementary instruction were left to be provided, in England as elsewhere, by the church and by private philanthropy; not until 1833 did Parliament begin to appropriate money for the aid of local authorities in the maintenance of schools. In 1839 the amount of the annual grant was increased, and an order in council created a Committee of the Privy Council on Education, whose vice-president became, in 1856, a member of the ministry. The Forster Education Act of 1870 made no attempt to set up a nation-wide system of publicly supported schools. But it required all communities that were not adequately served by either denominational or public schools to see that the deficiencies were supplied, and it authorized the election of local school boards to undertake the work of educational administration. During the next three decades the number of public schools steadily increased, and in 1899 the central Committee on Education was converted into the present Board of Education, whose jurisdiction is coextensive with the broad fields of elementary and secondary instruction. This Board, indeed, prescribes the nature and amount of the instruction to be given in all schools aided by public money; it inspects all such schools, together with private or endowed secondary schools at their request; and it carries on educational investigations and publishes bulle-

[1] W. B. Munro, *Government of European Cities* (New York, 1909), 330–332.

[2] *Report of the Committee to Examine the Question of Government Machinery for Dealing with Trade and Commerce.* Cd. 319, 1919.

tins and reports. An Education Act of 1902 abolished the school boards and transferred the work of local administration to the county and borough councils, each of which is required to maintain a special committee on the subject; so that nowadays the supervisory contact of the central Board is principally with these committees.[1]

Other regulative boards of which less need be said are: (1) the Board of Works, which since its separation in 1852 from the Commissioners of Woods and Forests, has had charge of the construction and upkeep of national parks, palaces, and public buildings; (2) the Board of Agriculture, created in 1889, and endowed with limited powers for the promotion of agriculture, the prevention of diseases among animals, and the control of fisheries; and (3) the Local Government Board. The first two of these agencies are relatively unimportant; the third has ceased altogether to exist.

Although now extinct, the Local Government Board had, for upwards of fifty years, a rôle of such importance in the governmental system that it merits a word of comment.[2] Legally, the Board dated from 1871. But its history really goes back to 1834, when the Poor Law Amendment Act set up a Poor Law Commission charged with the supervision of the administration of public charity by the local authorities. In 1847 this body was converted into a Poor Law Board, with representation in the ministry, and in 1871 the functions of an earlier Board of Public Health and of the local government subdepartment of the Home Office were added and the name was broadened to Local Government Board. As will be pointed out in another place, centralizing legislation of the past hundred years has wrought a remarkable transformation in the English system of local government,[3] and it is not too much to say that the Local Government Board has been the principal means or medium employed in this readjustment; save in relation to police, education, and the regulation of public utilities, substantially all administrative and supervisory control wielded from London over the authorities of county, borough, urban and rural district, and parish was gathered, until 1919, in its hands. It had few powers of direct administration; but it exercised strong regulative influence in relation to poor relief, public health, sanitation, local

[1] Jenks, *Government of the British Empire*, 235–244; Lowell, *Government of England*, I, 295–342.

[2] The circumstances under which it was merged, in 1919, into the new Ministry of Health are described below. See p. 86.

[3] See p. 227.

borrowing and expenditure, old age pension administration, and half a score of other matters. It inspected, criticized, and advised; within the limits of powers conferred by Parliament, it made and executed regulations with the force of law; it approved, amended, and vetoed local legislation; it audited local accounts; in a few cases it appointed and removed officials. The president of the Board was not only a responsible minister but usually an influential member of the cabinet.[1]

Administrative Reorganization after 1914. — The war subjected the administrative system to a severe strain and wrought great, and more or less lasting, changes in it. Readjustments were of three main kinds, according as they affected the ministry in (1) its size, (2) its party character, and (3) its relation to the cabinet and to Parliament. Compared with continental ministries, the British ministry was already very large when the war began. It numbered from fifty to sixty persons, whereas the French ministry numbered but twelve, the Italian twelve, and the German eight. From the time when the cabinet was originally set off from the ministry and the ministry as such ceased to be a policy-determining body, and even to hold meetings, there was no very determined effort to keep down the numbers; and during the war period new ministries were created, departments were divided and otherwise reconstructed, and the number of officials of ministerial rank (especially parliamentary under-secretaries) was increased, with such freedom that the membership of the ministry was brought up, by June, 1918, to ninety-three. The principal ministries thus established after 1914 were: munitions in 1915; blockade, labor, pensions, food control, shipping control, and air service in 1916; national service and reconstruction in 1917; and transport and public health in 1919.[2] Most of these were created for war purposes only, and will not be kept up, at all events as separate departments. On the other hand, they have involved a considerable amount of administrative reconstruction which is intended to be permanent.

A good illustration of the kind of reorganization that has been in progress since the armistice is afforded by the new Ministry of Public Health. Medical examinations in connection with recruiting brought to light grave facts concerning the physical

[1] Lowell, *Government of England*, I, 284–294; Munro, *Government of European Cities*, 315–330; Ashley, *Local and Central Government*, Chap. i; M. R. Maltbie, "The Local Government Board," in *Polit. Sci. Quar.*, June, 1898.

[2] For a full account of the evolution and functions of these new ministries see Fairlie, *British War Administration*, Chaps. iv–xii.

fitness of the people, especially the industrial classes, and forced the conclusion that the state must in future concern itself far more with matters of public health than in times past. Before and during the war, public health functions were loosely distributed among a number of distinct branches of the government, with much resulting friction, confusion, and inefficiency, and it became very clear that if the work of the government was to be properly performed in this field, control must be gathered in a single department clothed with adequate powers. Such a department was authorized by act of Parliament approved June 3, 1919. To the new health ministry were transferred the inspection of factories and workshops, hitherto carried on by the Home Office; the medical inspection of school children, taken over from the department of education; and the administration of the National Insurance Act of 1911, formerly in the hands of a board of insurance commissioners.[1] Certain new functions were also assigned, especially the promotion of sanitary housing and sundry activities directed to the prevention of disease. Finally, the Local Government Board — which, it will be recalled, had absorbed a national Board of Health in 1871 — was abolished as such and its extensive functions were transferred to the new ministry, although the act provided that any of the powers thus acquired which did not relate to public health might be transferred elsewhere at any time by order in council.[2]

Even more important, temporarily at all events, than the increase in size were the changes which the war produced in the ministry's party character and in its relation to the cabinet and to Parliament. In France, where all ministries are to some extent coalitions, the Viviani ministry of 1914 was reconstructed within a few weeks after the outbreak of hostilities, with a view to including representatives of all important political groups. In Great Britain, where the party unity of the ministry had so long been an inflexible rule, the effort was made to keep up the old system, notwithstanding immediate agreement upon a general party truce; and the Liberal ministry presided over by Asquith held on for upwards of a year. Public discontent and parliamentary opposition finally forced a change, however; and in May, 1915, both the cabinet and the ministry as a whole were

[1] In Ireland, however, the commissioners were left in control.

[2] The development of public health administration to 1914 is best described in B. G. Bannington, *English Public Health Administration* (London, 1915). On the new ministry see P. Alden, "A Ministry of Health," in *Contemp. Rev.*, Apr., 1918.

reconstructed on a coalition basis. Thenceforth the coalition principle was steadily adhered to; and at the date of writing (July, 1920) a coalition ministry presided over by Lloyd George is still in office, although signs multiply that the principle of party solidarity will presently be revived.[1]

Other changes deeply affected the relation of the ministry to the cabinet and to Parliament, the most important being the creation of the "war cabinet" in December, 1916. The war cabinet and its workings will be described in the succeeding chapter.[2] Hence it will suffice to say here that when this small body of men was set off and endowed (by common consent rather than by any formal act) with almost unlimited powers, the cabinet of the usual sort totally disappeared, most ministers who had had cabinet seats lost them, and, notwithstanding occasional opportunity to meet with and advise the members of the war cabinet, the ministry as a whole became more purely administrative than before. Furthermore, the relation with Parliament was altered. In the first place, several ministers were appointed who were not members of Parliament at all.[3] In addition, the ministers as a group fell into the habit of occupying themselves almost exclusively with their administrative duties and as a rule took little part in the proceedings of the two houses. This was partly because of the extraordinary pressure of administrative tasks, but perhaps mainly because of the perfunctory nature of parliamentary debates in a period when practically every request of the government was certain to be complied with as a matter of course.

It is pointed out in the succeeding chapter that the extraordinary form of organization which the war cabinet involved was abandoned late in 1919, and that the cabinet has resumed its earlier appearance, save only that the coalition basis has been preserved. This means that the old relation between the ministry and the cabinet on the one hand and the ministry and Parliament on the other has been largely revived, excepting only those aspects that hinge upon considerations of party; and even the traditional party element is likely to reappear, although party lines can be depended upon to be somewhat differently drawn. So far as the ministry, as distinguished from the cabinet, is concerned, the permanent effect of the experiences of the war

[1] See pp. 330–335.

[2] See p. 106.

[3] As reconstructed in December, 1916, the ministry contained sixty members of the House of Commons, twenty-three members of the House of Lords, and five persons who were not members of either house.

period is likely to be the expansion of administrative work in new directions and the better correlation of it under unified agencies of control, rather than any marked alteration of legal status or function.[1]

The Permanent Civil Service. — A noteworthy feature of the English government is the combination of amateur and expert in executive and administrative work. The ministers are, in general, amateurs. They are drawn from widely differing walks of life; they usually bring to their posts little experience in administration; the more important ones must give a large part of their time to cabinet, party, and other activities outside their departments; they are frequently shifted from one position to another. All this would mean inefficiency and waste save for the fact that the departments and boards are manned with permanent, non-political officials, who, carefully selected in the first place, have, through long service and close application to duty, become expert in the business which the department or office is expected to carry on. Furthermore, the great administrative services — the post-office, the customs, the inland revenue, etc. — are organized in strict accordance with what we should call in the United States the "merit system."

It is only within the past hundred years that this fortunate position has been reached; indeed, until less than two generations ago England, like the United States, had a civil service problem of the first magnitude. The principle was early and easily established that there should be, among the higher officers — although not the highest — of every department a reasonable fixity of tenure; experience showed this to be a plain necessity.

[1] The importance of administrative efficiency was freshly emphasized by the war, and in July, 1917, a subcommittee of the Reconstruction Committee (later, the Ministry of Reconstruction), with Lord Haldane as its chairman, was appointed to investigate the organization and work of the administrative departments and to "advise in what manner the exercise and distribution by the Government of its functions should be improved." Renamed the Machinery of Government Committee, this body carried out its task conscientiously, and in December, 1918, it submitted an extensive and highly interesting report (Cd. 9230). Doubtless influenced by the operation of the war cabinet, the committee urged both a small cabinet (preferably ten members) and a businesslike mode of procedure, coupled with liberal publicity, such as the war cabinet maintained. It stressed the necessity of keeping the ministers, especially the cabinet members, in possession of the data requisite for expeditious actions, and hence advocated the establishment of a separate department of research and inquiry. It outlined a scheme of reorganization which would entail a sharp reduction of the number of ministries, while those that remained would become substantially coördinate on the plan of the ten federal executive departments in the United States. For a fuller account of the report see F. A. Ogg, "Proposed Administrative Reorganization in Great Britain," in *Amer. Polit. Sci. Rev.*, May, 1919, pp. 297–301.

But the great mass of subordinate officials and employees not only were appointed for no definite period, but were subject to removal by arbitrary process and for any reasons, real or alleged. Removals dictated by partisan motives never became as common as in the United States, mainly on account of the prevalent conception of an office-holder as having a vested interest in the position that he holds. But when vacancies occurred, appointments were usually made on a partisan or personal basis; and the patronage became a powerful instrumentality in politics.

After the Reform Act of 1832, there were evidences of a public awakening on the subject; and — curiously enough, about the time when the United States, under Andrew Jackson's leadership, was fast surrendering to the spoils conception of public office — changes for the better began to be made. Pass examinations designed to exclude the least fit candidates were introduced in some departments; later, competitive tests were started. In 1853 a government commission reported in favor of a general system of appointment by open competitive examination, and two years later an order in council created a civil service commission of three members to examine candidates for junior positions.[1] Thenceforth the system made gradual headway. Pass examinations, however, continued to be generally employed, and it was only in 1870 that the open competitive examination was widely introduced. An order in council of that year, which is still the basis of the examination system, provides that — save for offices filled by direct appointment of the crown, positions filled by promotion, and positions requiring professional or other peculiar qualifications — no person shall be employed in any branch of the civil service until he has been examined by the Civil Service Commission and reported qualified to be admitted on probation. The order listed many classes of offices for which the examinations must be competitive, and the number has since been extended until it covers almost all positions not of a professional or confidential nature, and at the same time not involving mere manual labor or other menial services. In addition to the ministers, the permanent under-secretaries and assistant under-secretaries and the chiefs of bureaus in the departments still stand outside the protected service. The chief clerks in the departments are recruited

[1] The reform in England was aided by the decision of Parliament in 1853 to withdraw from the East India Company the privilege of appointing persons to be trained for the India service; this being followed by the establishment, in 1855, in pursuance of a report by a commission presided over by the historian Macaulay, of a system of open competitive examinations in the India service.

mainly by promotion. But practically all officials and employees below these are selected on the basis of competitive examinations, which are thrown open to aspirants almost as generously as are similar tests in the United States.

The English system offers even greater security of tenure for appointees than does our American classified service, and it is applied to positions considerably higher up the scale than is the competitive system in this country; although it should be added that there is a distinct tendency among us to carry the system farther toward the top.[1] Because of the greater permanence of tenure, the inclusion of positions of large discretion and influence, and the desire to recruit the service from young men who will prove deserving of successive promotions, the English examinations are framed mainly with a view to determining the candidate's general attainments, and especially his intellectual capacity. Mathematics, the classics, history, science — these and other branches of higher learning enter prominently; even the examinations for positions of a purely clerical character are conducted on this principle, although they, naturally, are based upon more elementary subjects. Under the system operating in the United States the object of the examinations is not, save incidentally, to test general attainments and capacity; it is, rather, to ascertain the applicant's technical proficiency and present fitness for the kind of work that he seeks. Each system has certain obvious advantages; but the two are as unlike as they can well be.

In England, as in the United States, security of tenure during good behavior and opportunity for promotion are conditioned upon abstention from political activities. The permanent employees belong to the "non-political" part of the government, in contrast with the ministers, who are "political" officers. They are not disfranchised; although from 1782 to 1868 postal employees and revenue collectors were, at their own request, barred from voting.[2] But they may not make political speeches, write partisan tracts, edit or publish party newspapers, canvass for a parliamentary candidate, or serve on a party committee; and if an official desires to become a candidate for a seat in the House of Commons he must resign his office when he first issues his address to the voters. Political abstention is secured on

[1] J. A. McIlhenny, "The Merit System and the Higher Offices," in *Amer. Polit. Sci. Rev.*, Aug., 1917.

[2] The "returning officers," who have charge of parliamentary elections in the constituencies, are temporarily disqualified; but they do not belong to the civil service. See p. 135.

these lines partly by statute, partly by custom, and partly by the regulations of the civil service itself.[1]

[1] The best brief account of the permanent civil service is Lowell, *Government of England*, I, 145–194. An important treatise is D. B. Eaton, *The Civil Service in Great Britain* (New York, 1880), a book written by the first U. S. Civil Service Commissioner and embodying the results of researches carried on in England by the author at the direction of President Hayes. It was a leading contribution to the movement which led to the Pendleton Act of 1883. As a history and analysis of civil service reform in England, it is now superseded by R. Moses, *The Civil Service of Great Britain* (New York, 1914). Useful articles are E. Jenks, "Patronage and the State," in *Contemp. Rev.*, July, 1917; D. M. Zimmern, "The Civil Service and Women," in *Polit. Quar.*, Sept., 1916; and E. S. Haldane, "Women and the Civil Service," in *Fort. Rev.*, Apr., 1918. See also F. G. Heath, *The British Civil Service, Colonial, Indian, and Diplomatic* (White Plains, 1917). An important book on a special phase of the subject is A. L. Lowell and H. M. Stephens, *Colonial Civil Service; the Selection and Training of Colonial Officers in England, Holland, and France* (New York, 1900).

CHAPTER VII

THE CABINET

Privy Council, Ministry, and Cabinet. — A correct understanding of the English governmental system, and especially of the manner in which the powers of the crown are exercised, requires that three closely related but essentially separate institutions be clearly distinguished: (1) the Privy Council, (2) the ministry, (3) the cabinet. As has been pointed out, the Privy Council was, from the fifteenth century onwards, a group of men who gave advice to the king and assisted to some extent in the supervision of administration. The number of councilors was variable, and it always tended to become too large to admit of the requisite dispatch and secrecy; wherefore, as has been explained, the king fell into the habit of taking into his confidence only certain members of the larger body, leaving the others to the routine of their respective offices or stations. Thus arose the cabinet, which throughout its history has been only an inner circle, unknown to the law, of the older and larger Council. The Privy Council survives to-day, and in both law and theory it is still the great advisory and administrative agency of the governmental system. A cabinet member has authority and is known to the law only as a privy councilor. In point of fact, however, the Council is now, as such, only a formal institution. It never meets save for ceremonial purposes, *e.g.*, at a coronation; and although in law its action is necessary to many great measures of state, notably the promulgation of orders in council,[1] decisions upon all matters can be made in its name by as few as three of its members. All cabinet officers belong to the Council, so that any ordinary meeting of the cabinet fulfills all legal requirements for a meeting of the Council. One should hasten to add that not only is the cabinet to all intents and purposes a committee of the Council, but there are other committees which carry on continuous and important work. Thus the Judicial Committee,

[1] On the nature of orders in council see Anson, *Law and Custom of the Constitution*, II, Pt. i, 147–149.

formed in 1833, is a great quasi-tribunal which renders final verdict (in the guise of advice to the crown) on all appeals from courts outside the United Kingdom.[1] Many important administrative boards and commissions, furthermore — for example, the Board of Trade and the Board of Education — originated as Privy Council committees.

All members of the Council are appointed by the crown, and for life; most of them gain admission by their appointment to cabinet offices. The number, which is without fixed limit, is now about three hundred. Councilors include, chiefly, members of cabinets, present and past; other high officers of state; the two archbishops and the bishop of London; several peers of eminence; higher judges and ex-judges; and men of distinction in literature, art, science, law, or other fields of endeavor, upon whom the dignity is conferred as a mark of honor. The legal head, known as the Lord President of the Council, is a dignitary of high rank who regularly acts as a "minister without portfolio."[2] All members bear the title of Right Honorable.

The relation of the personnel of the ministry and of the cabinet to that of the Privy Council is now self-evident. The Council includes all of the cabinet members, and usually some ministers who stand outside of the cabinet circle, besides a much larger number of persons who do not belong to "the Government," nor necessarily to the party in power. The ministry also includes the cabinet group, together with the few remaining officials of ministerial rank who belong to the Council, but in the main is made up of officials who have places in neither the cabinet nor the Council.

Composition of the Cabinet. — The inner group of ministers, whose members individually (with three or four exceptions) direct the affairs of the main departments, and collectively shape the policy and manage the conduct of the government as a whole, forms the cabinet. This is the most characteristic feature of the English system. Nevertheless, the cabinet is still wholly unknown to the law; legally, as has been stated, the cabinet officer derives his executive function from his appointment to a ministerial post and his advisory function from his membership in the Privy Council. The composition of the cabinet is determined partly by custom, partly by momentary considerations of expediency. Certain of the ministers are nowadays invariably included: the First Lord of the Treasury, the Lord Chancellor, the Chancellor of the Exchequer, the First Lord of the Admiralty,

[1] See p. 218.

[2] See p. 104, note 1.

and all of the secretaries of state. Two dignitaries who individually have no executive functions, *i.e.*, the Lord President of the Privy Council and the Lord Privy Seal,[1] are likewise always admitted. Beyond this, the make-up of the group is left to the discretion of the prime minister, whose decision as to whether to invite a minister to sit in the cabinet may be determined in deference to the wishes of the minister himself, or by the importance of the office in question at the moment, or by party interest. In years immediately preceding the Great War the presidents of the Board of Trade, the Board of Education, and the Local Government Board were regularly included, together with the Lord Lieutenant or the Chief Secretary for Ireland.[2] The Secretary for Scotland and the Chancellor of the Duchy of Lancaster were usually included, the Postmaster-General and the President of the Board of Agriculture frequently, and the First Commissioner of Works and the Lord Chancellor for Ireland occasionally.

There has never been a fixed number of members, and until recent years the size of the group steadily increased. Eighteenth-century cabinets contained, as a rule, not above seven to ten members. In the first half of the nineteenth century the number ran up to thirteen or fourteen; the second cabinet presided over by Lord Salisbury, at its fall in 1892, numbered seventeen; and most of the time from 1900 to the outbreak of the Great War there were twenty members. The causes of this increase include pressure from ambitious statesmen for admission to the influential circle, the growing necessity of giving representation to varied elements and interests within the dominant party, the multiplication of state activities which call for organization under new and important departments, and the desire to give every considerable branch of the administrative system at least one representative. The effect has been to produce a certain unwieldiness, to avoid which, it will be recalled, the cabinet was originally created; and for some years before the war there was a tendency toward the rise of a small inner circle which should bear a relation to the whole cabinet somewhat analogous to that which the early cabinet bore to the

[1] The duties of this official are nominal. In 1870 Sir Charles Dilke moved to abolish the office as useless, but Gladstone urged the desirability of having in the cabinet at least one man who should not be burdened with the management of a department, and the motion was lost.

[2] In theory the powers of the executive are exercised in Ireland by the Lord Lieutenant, but in practice they devolve upon the nominally inferior official, the Chief Secretary. See p. 286.

overgrown royal council. This tendency was viewed with apprehension by many people who felt that the concentration of power in the hands of an "inner cabinet" might fail to be accompanied by a corresponding concentration of responsibility. For more than a decade, however, criticism of the inordinate size of the cabinet group was freely voiced upon numerous occasions and by many observers.[1] Unsatisfactory experience during the early stages of the Great War led not only to the reconstruction of the cabinet on a coalition basis, but to a drastic reduction in the number of members; the regular cabinet was wholly superseded by a "war cabinet" of five (later six) persons. Contrary to expectation in some quarters, this proved to be only a temporary arrangement. In less than a year after the armistice, the cabinet was revived on its earlier lines, save that it continued to be a coalition; and the problem of the proper size of the body is still to be solved.[2]

Appointment of the Prime Minister.[3] — When a new ministry — and with it, of course, a new cabinet — is to be made up, the first step is the naming of the prime minister. Technically, the choice rests with the king. But custom, springing from practical necessity, leaves, as a rule, no room whatever for discretion in the matter. Promptly, and as a matter of course, the king sends for the man who is best able to command the support of the majority in the House of Commons, and asks him to make up a ministry. If the retiring ministry has "fallen," *i.e.*, has been forced out of office by the loss of its parliamentary majority, the new premier is certain to be the recognized leader of the party which formerly has played the rôle of opposition If there has not been a shift in party status, the premiership will be bestowed upon some one of the colleagues, at least upon one of the fellow-partisans, of the retiring premier, nominated, if need be, by the chiefs of the party. Thus, when in 1894 Gladstone retired from office on account of physical infirmity, the Liberal leaders in the two houses caucused on the question of whether he should be succeeded by Sir William Vernon Harcourt or by Lord Rosebery. They recommended Lord Rosebery, who was forthwith appointed by the Queen. If, by any

[1] Lowell, *Government of England*, I, 59; Anson, *Law and Custom of the Constitution*, I, Pt. i, 211.

[2] The war cabinet is described below. See pp. 106–111.

[3] In the succeeding pages the composition and functions of the cabinet are described as they were prior to the Great War. At the date of writing (1920) a coalition ministry, inherited from the war period, is still in office. But there is a reasonable presumption that the former system will be revived, at least in its essentials.

circumstance, the premiership should fall to the Opposition at a moment when the leadership of this element is in doubt, the crown would be guided, similarly, by the informally expressed will of the more influential party members. While, therefore, the appointment of the prime minister remains almost the sole important governmental act which is performed personally by the sovereign, even here the substance of power has been lost and only the form survives.[1]

Selection of Other Ministers and Cabinet Members. — The remaining members of both ministry and cabinet are selected by the premier, in consultation, as a rule, with leading representatives of the party. The list of nominees is placed in the hands of the sovereign, who gives it the necessary formal approval, and an announcement forthwith appears in the London *Gazette* to the effect that the persons named have been chosen by the crown to occupy the several posts. Officially, there is no mention of the "cabinet." In the selection of his colleagues — whether they are to be simply ministers or cabinet members as well — the premier theoretically has a free hand. Practically he is bound to comply with numerous principles and to observe various precedents and practical conditions. Two principles, in particular, must be adhered to in determining the structure of every cabinet. All of the members must have seats in one or the other of the two houses of Parliament,[2] and all must be identified with the party in power, or at least with an allied political group. There was a time, when the personal government of the king was still a reality, when the House of Commons refused to admit to its membership persons who held office under the crown, and this disqualification found legal expression as late as the Act of Settlement of 1701.[3] With the ripening of

[1] On certain occasions — notably in 1852 and 1859 — Queen Victoria determined by her personal choice which of two or more leaders in the ruling party should be put at the head of a new ministry. But it is doubtful whether any future sovereign will have an opportunity to exercise similar discretion. Compare the appointment of the prime minister in France, as described below (see p. 399).

[2] The one notable instance of departure from this rule during three quarters of a century preceding the Great War was Gladstone's tenure of the post of Secretary of State for the Colonies during the last six months of the Peel administration in 1846.

[3] A clause of this act made any person holding an office or place of profit under the crown incapable of sitting in the House of Commons. The cabinet system was now, however, taking form, and Parliament soon perceived how inadvisable it was to exclude the great officers of state from the chamber in which they could most effectively be held to account. Accordingly, the provision was modified by the Place Act of 1707 so that members of the House of Commons appointed to offices under the crown should indeed vacate their seats, but should be immediately capable of reëlection. Such reëlection almost invariably follows as a matter of course,

parliamentary government in the eighteenth century, however, the thing that was formerly regarded as objectionable became highly expedient, if not a necessity. When once the ministers formed the real executive of the nation, it was but logical that they should be permitted to appear on the floor of the two houses to introduce and advocate measures and to explain the acts of the government. Ministers had always occupied seats in the upper chamber; and not only was all objection to their appearance in the lower chamber removed, but by custom it came to be an inflexible rule that cabinet officers, and indeed the ministers generally, should be drawn exclusively from the membership of the two houses. If it is desired to bestow a ministerial post upon a man who is not a member of either house, the difficulty may be got around either by making him a peer, which would entitle him to a seat in the House of Lords, or by procuring his election to a seat in the House of Commons.

Since the days of Walpole, who was himself a commoner, the premiership has been held approximately half of the time by commoners and half of the time by peers. Distribution of the other cabinet members has varied greatly. The first cabinet in the reign of George III contained fourteen members, of whom thirteen had seats in the House of Lords; and throughout the eighteenth century peers usually preponderated decisively. The steadily increasing importance of the House of Commons, however, led — especially after the Reform Act of 1832 — to the selection of a larger proportion of members from the lower chamber, and during the past thirty or forty years cabinet positions have usually been divided about evenly between the two houses. A statute of 1864 curiously prevents more than four (now five) of the five (now six) secretaries of state from sitting in the House of Commons; and the Lord Privy Seal, the Lord High Chancellor, and the Lord President of the Council almost invariably belong to the House of Lords. Beyond this, there is no positive requirement, in either law or custom. To fill the various posts the premier must bring together the best men he can secure — not necessarily the ablest, but those who will work together most effectively — with only secondary regard to the question of whether they sit in the one or the other

and without opposition. The Representation of the People Act of 1867 provided that the mere transfer, from one office to another in the same ministry, of a person who has been reëlected since his appointment to his former office, shall not involve the loss of his seat. The provisions of the Place Act were suspended in several instances during the Great War. Cf. Lowell, *Government of England*, I, 146; Moran, *Theory and Practice of the English Government*, 108–109.

of the legislative houses. A department whose chief sits in the Commons is certain to be represented in the Lords by an under-secretary or other spokesman, and *vice versa*. In France and other continental countries which have a cabinet system, executive departments are, as a rule, represented in Parliament by their presiding official only. But this official is permitted, as English ministers are not, to appear and speak on the floor of either chamber.[1]

Other Considerations Determining Appointment. — A second general principle which controls in making up both a ministry and a cabinet is that of party harmony. William III undertook to govern with a cabinet in which there were both Whigs and Tories, but the result was confusion and the experiment was abandoned. Except during the ascendancy of Walpole, the cabinets of the eighteenth century usually embraced men of more or less diverse political affiliations. But gradually the conviction took root that in the interest of unity and efficiency the political solidarity of the cabinet group is indispensable. The last occasion (prior to the Great War) upon which it was proposed to make up a cabinet from utterly diverse political elements was in 1812. The scheme was rejected, and from that day to 1915 cabinets were regularly composed, not always exclusively of men identified with a single political party, but at least of men who were in substantial agreement upon the larger questions of policy, and who expressed willingness to coöperate in carrying out a given program. The fundamental requisite is unity. It is the obligation of every cabinet member to agree, or to appear to agree, with his colleagues. If he is unable to do this, he must resign.

In the selection of his co-laborers the premier works under still other practical restrictions. One of them is the well-established rule that surviving members of the last cabinet of the party, in so far as they are in active public life and desirous of appointment, shall be given prior consideration. Members of the party, furthermore, who have come into special prominence and influence in Parliament must usually be included. In truth, as Bagehot points out, the premier's independent choice is apt to find scope not so much in the determination of the cabinet's personnel as in the distribution of offices among the members selected; and even here he will often be obliged to subordinate his wishes to the inclinations, susceptibilities, and capacities of his prospective colleagues. In the expressive simile

[1] See p. 439.

of Lowell, the premier's task is "like that of constructing a figure out of blocks which are too numerous for the purpose, and which are not of shapes to fit perfectly together." [1]

Ministerial Responsibility. — In its actual operation the English cabinet system, down to the Great War at all events, presented three salient features: (1) the responsibility of cabinet ministers to Parliament; (2) the secrecy of cabinet proceedings; and (3) the close coördination of the cabinet group under the leadership of the premier. Every minister, whether or not in the cabinet, is responsible individually to Parliament, which in effect means to the House of Commons, for all of his public acts. If he is made the object of a vote of censure he must retire. In the earlier eighteenth century the resignation of a cabinet officer did not affect the tenure of his colleagues; the first cabinet to retire as a body was that of Lord North in 1782. Subsequently, however, the ministerial group so developed in compactness that in relation to the outside world, and even to Parliament, the individual officer came to be effectually subordinated to the whole. Not since 1866 has a cabinet member retired singly in consequence of an adverse parliamentary vote. If an individual minister falls into serious disfavor, one of two things almost certainly happens. Either the offending member is persuaded by his colleagues to modify his course or to resign before formal parliamentary censure shall have been passed, or the cabinet as a whole rallies to the support of the minister in question and stands or falls with him. This is but another way of saying that, in practice, the responsibility of the cabinet is collective rather than individual. This responsibility covers the entire range of acts of the executive branch of the government, whether regarded as acts of the king or of the ministers themselves, and it constitutes the most distinctive feature of the English parliamentary system. Formerly the only means by which ministers could be held to account by Parliament was impeachment. With the development, however, of the principle of ministerial responsibility as a necessary adjunct to and instrumentality of parliamentary government, the occasional and violent process of impeachment was superseded by continuous, inescapable, and pacific legislative supervision. The impeachment of cabinet ministers may, indeed, be regarded as obsolete.

A fundamental maxim of the constitution to-day is that a cabinet shall continue in office only so long as it enjoys the

[1] *Government of England*, I, 57. See MacDonaugh, *Book of Parliament*, 148–183.

confidence and support of a majority in the House of Commons. There are at least four ways in which a parliamentary majority may manifest its dissatisfaction with a cabinet, and thereby compel its resignation. It may pass a simple vote of "want of confidence," assigning therefor no definite reason. It may pass a vote of censure, criticizing the cabinet for some specific act. It may defeat a measure which the cabinet advocates and declares to be of vital importance. Or it may pass a bill in opposition to the advice of the ministers. The cabinet is not obliged to give heed to an adverse vote in the Lords; but when any of the four votes mentioned is carried in the lower chamber, the premier and his colleagues must do one of two things — resign or appeal to the country. If it is clear that the cabinet has lost the support, not only of Parliament, but also of the electorate, the only honorable course for the ministry is to resign. If, on the other hand, there is doubt as to whether the parliamentary majority really represents the country upon the matter at issue, the ministers are warranted in requesting the sovereign to dissolve Parliament and to order a general election. In such a situation the ministry continues tentatively in office. If the elections return a majority prepared to support the ministers, the cabinet is given a new lease of life. If, on the other hand, the new parliamentary majority is hostile, no course is open to the ministry save to retire.

Secrecy of Proceedings. — Steadily responsible to the House of Commons and obligated to resign collectively when no longer able to command a working majority in that body, the cabinet must at all times seek to present a solid and imposing front. Two devices to this end have been secrecy of proceedings and leadership of the premier. It is a sufficiently familiar principle that a group of men brought together to agree upon and execute a common policy in behalf of a widespread and diverse constituency will be more likely to succeed if the differences that are sure to appear within their ranks are not published to the world. It was in deference to this fact that the German Bundesrath always transacted business behind closed doors; and it was for the same reason that the public was excluded from the sittings of the convention which framed the present constitution of the United States. Notices of meetings of the English cabinet and the names of members present appear in the press, but until of late not a word was given out, officially or unofficially, concerning the subjects discussed, the opinions expressed, or the conclusions arrived at. In the earlier part of the nineteenth

century brief minutes of the proceedings were recorded. But in later times no clerical employee was allowed to be present, and no formal record whatsoever was kept.[1] For knowledge of past transactions members had to rely upon their own or their colleagues' memories, supplemented at times by privately kept notes. It was, indeed, — so the ex-premier, Mr. Asquith, stated in the House of Commons in 1916 — "the inflexible, unwritten rule of the cabinet that no member should take any note or record of the proceedings except the prime minister." It was announced, however, on this same occasion that a different plan was to be followed in the future, that minutes of the proceedings were to be kept, and that a record of every decision would be sent by the prime minister's secretary to every member of the cabinet and to any other minister or department affected. Cabinet meetings, which are held only as occasion requires (usually as often as once a week when Parliament is in session) are entirely informal. There is not even a fixed place for them, the members being gathered sometimes at the Foreign Office, sometimes at the premier's official residence (No. 10, Downing Street), or, as circumstance may arise, at almost any convenient spot.

Leadership of the Premier. — The unity of the cabinet is farther safeguarded and emphasized by the leadership of the prime minister. Long after the rise of the cabinet to controlling influence in the state, the members of the ministerial body continued supposedly upon a common footing in respect to both rank and authority. The habitual abstention of the early Hanoverian monarchs from attendance at cabinet meetings, however, left the group leaderless, and the members gradually came to recognize a virtual presidency on the part of one of their own number. In time what was a mere presidency was converted into a thoroughgoing leadership, in short, into the premier's office of to-day. It is commonly considered that the first person who fulfilled the functions of prime minister in the modern sense was Sir Robert Walpole, First Lord of the Treasury from 1715 to 1717 and from 1721 to 1742. The term "prime minister" was not yet in common use; Walpole disliked the title and refused to allow himself to be called by it. But that the realities of the office existed is indicated by a motion made in the Commons attacking Walpole on the ground that he had

[1] Similarly, no formal record is kept of proceedings of the president's cabinet in the United States. On the secrecy of English cabinet proceedings see Low, *Governance of England* (new ed.), 34–43.

"grasped in his own hands every branch of government; had attained the sole direction of affairs; had monopolized all the powers of the crown; had compassed the disposal of all places, pensions, titles, and rewards" — almost precisely, as one writer puts it, what the present premier is doing and is expected to do.[1] By the time of the establishment of the ministry of the younger Pitt, in 1783, the ascendancy of the premier among his colleagues was an accomplished fact and was recognized as legitimate. The essentials of his position may be regarded as substantially complete when, during the later years of George III, the rule became fixed that in making up a ministry the king should merely ratify the choice of officials made by the premier.

Not until 1906 was the premier's office recognized by law.[2] But through more than a century no other public position in the nation has been comparable with it in volume of actual power. Within the ministry, more particularly the cabinet, the premier is the guiding force. He presides, as a rule, at cabinet meetings; he advises with colleagues upon matters affecting the administration's welfare; and, while he may shrink from doing it, he can require of his colleagues that they accept his views, with the alternative of his resignation or theirs.[3] He occupies one of the high offices of state, usually that of First Lord of the Treasury; and, although ordinarily his own portfolio will not absorb much of his time or energy, he will expect to exercise a general supervision, and even a certain amount of control, over all of the departments in which his appointees have

[1] Moran, *Theory and Practice of the English Government*, 99.

[2] This was done in a statute fixing the order of precedence in state ceremonials. A royal proclamation of December 2, 1905, however, gave "Our Prime Minister" precedence next after the Archbishop of Canterbury, the Lord High Chancellor, and the Archbishop of York. For the full order of precedence see *Hazell's Annual and Almanac*, 1919, p. 158.

[3] The resignation of the premier terminates *ipso facto* the life of the ministry. An excellent illustration of the accustomed subordination of individual differences of opinion to the interests of cabinet solidarity is afforded by some remarks made by Mr. Asquith, December 4, 1911, to a deputation of the National League for Opposing Woman Suffrage. The deputation had called to protest against the Government's announced purpose to attach a suffrage amendment (if carried in the House of Commons) to a forthcoming measure of franchise reform. The Premier explained that he was, and always had been, of the opinion that "the grant of the parliamentary franchise to women in this country would be a political mistake of a very grievous kind." "So far," he continued, "we are in complete harmony with one another. On the other hand, I am, as you know, for the time being the head of the Government, in which a majority of my colleagues, a *considerable* majority of my colleagues — I may say that without violating the obligation of cabinet secrecy . . . — are of a different opinion; and the Government in those circumstances has announced a policy which is the result of their combined deliberations, and by which it is the duty of all their members, and myself not least, to abide loyally. That is the position, so far as I am personally concerned."

been placed.[1] The growth of the number of departments and ministerial offices in the past half-century has, of course, augmented the task of supervision; and the difficulty is still farther increased when the premier chooses, as did Lord Salisbury (who was Secretary of State for Foreign Affairs, as well as premier, from 1887 to 1892 and from 1895 to 1900), to take an important executive department for himself. On the other hand, the premier's supervisory function tends to be diminished, as Palmerston once lamented,[2] in times when the departments are in the hands of conspicuously able men.

The prime minister is, furthermore, the link between the cabinet and, on the one hand, the crown, and, on the other, Parliament. On behalf of the cabinet he advises with the sovereign, communicating full information concerning ministerial acts and synopses of the daily debates in Parliament. In the house of which he is a member he represents the cabinet as a whole, makes such statements as are necessary concerning general aspects of the Government's policy, and speaks, as a rule, upon every general or important projected piece of legislation. A premier who belongs to the House of Commons is, of course, more advantageously situated than one who sits in the House of Lords. The latter must trust a lieutenant to represent him and carry out his instructions in the place where the great legislative battles are fought; and this lieutenant, the Government leader in the House, tends strongly to draw into his own hands a part of the authority belonging to the cabinet's official head. During Lord Salisbury's tenure of the premiership this difficulty was largely obviated by the fact that the Government leader in the lower chamber was the premier's own nephew, Mr. Balfour. But, as Gladstone once wrote, "the overweight of the House of Commons is apt, other things being equal, to bring its leader inconveniently near in power to a prime minister who is a peer."[3]

During the decade preceding the Great War the prime minister drew fresh importance from his position as president of both

[1] Inasmuch as the cabinet is historically and legally only a committee of the Privy Council, it would simplify matters, as Low points out (*Governance of England*, 155), if the Lord President of the Council were also the prime minister; and in 1894 Lord Rosebery, upon assuming the premiership, took for himself the Lord President's titular position. Usage, however, has not developed on these lines; and a practical obstacle is the strong tradition that the Lord President shall be a member of the upper house. In France and other continental countries the premier is officially president of the council of ministers. The same is true in the British self-governing colonies.

[2] E. Ashley, *Life and Correspondence of Henry John Temple, Viscount Palmerston*, II, 257.

[3] *Gleanings of Past Years* (New York, 1878), I, 242.

the Imperial Conference and the cabinet committee on imperial defense;[1] and it is hardly necessary to add that the extraordinary demands of war time gave him, at least for the time being, new leadership and an unprecedented measure of independent authority.[2]

The Cabinet's Central Position. — In the English governmental system the cabinet is in every sense the keystone of the arch. Its functions are both executive and legislative, and indeed, to employ the expressive figure of Bagehot, it is the hyphen that joins, the buckle that binds, the executive and the legislative departments together.[3] As has been pointed out, the uses of the sovereign are by no means wholly ornamental. None the less, the actual executive is the cabinet. It is within the cabinet circle that executive and administrative policies are decided upon, and it is the cabinet ministers and their subordinates in the several departments that carry these policies, and the laws of the land generally, into effect. On the other side, the cabinet members not only occupy seats in one or the other of the two houses of Parliament; they direct, individually and collectively, almost the entire work of legislation. They — primarily the prime minister — prepare the Speech from the Throne, in which at the opening of a parliamentary session the state of the country is reviewed and a program of legislation is outlined. They formulate, introduce, explain, and advocate needful legislative measures upon all manner of subjects; and although bills may be submitted in either house by non-ministerial members, it has become an unwritten rule that measures of large importance will receive the serious attention of the houses only if they emanate from, or at all events have the active support of, the cabinet. Statistics show that measures introduced by private members have little chance of being passed, especially if they deal with large or controversial matters.[4]

In effect, the cabinet forms a parliamentary committee chosen, as Bagehot bluntly puts it, to rule the nation. If a cabinet group does not represent the ideas and purposes of Parliament as a whole, it at least represents the ideas of the majority of the dominant chamber; and that is sufficient to give it, during its tenure of office, a thorough command of the situation. The

[1] See p. 108.

[2] On the premiership see Low, *Governance*, Chap. ix. A valuable study is M. Sibert, *Étude sur le premier ministre en Angleterre depuis ses origines jusqu'à l'époque contemporaine* (Paris, 1909).

[3] *English Constitution* (new ed.), 79.

[4] See p. 179.

basal fact of the political system is rule by party majority, and within the party majority the power that governs is the cabinet. "The machinery," says Lowell, "is one of wheels within wheels; the outside ring consisting of the party that has a majority in the House of Commons; the next ring being the ministry, which contains the men who are most active within that party; and the smallest of all being the cabinet, containing the real leaders or chiefs. By this means is secured that unity of party action which depends upon placing the directing power in the hands of a body small enough to agree, and influential enough to control."[1]

The War Cabinet, 1916–19. — It goes without saying that the outbreak of the Great War in 1914 brought upon the cabinet, as upon all parts of the governmental system, an unexpected and fearful strain. By degrees the national administration was transformed almost beyond recognition. New duties fell to the old departments, entailing the creation of new divisions and sections and an enormous increase in the number of officials and the size of the staffs employed. New governmental agencies sprang up on all sides, including the war trade department, the ministry of munitions, and the board of control for the liquor traffic in 1915, the ministries of food control, shipping control, pensions, labor, and blockade in 1916, and the departments of national service and reconstruction in 1917. But more remarkable still were the changes wrought in the composition and functioning of the cabinet.

The first important step toward cabinet reconstruction was

[1] *Government of England*, I, 56. For farther consideration of the cabinet, see Chap. xi below. The best discussion of the organization, functions, and relationships of the cabinet is Lowell, *op. cit.*, I, Chaps. ii iii, xvii–xviii, xxii–xxiii. Other good general accounts are Low, *Governance of England*, Chaps. ii–iv, viii–ix; Moran, *English Government*, Chaps. iv–ix; Anson, *Law and Custom of the Constitution*, II, Pt. i, Chap. ii; Maitland, *Constitutional History of England*, 387–430, and Dupriez, *Les ministres*, I, 36–138. A detailed and still valuable survey is Todd, *Parliamentary Government*, Parts iii iv. A brilliant study is Bagehot, *English Constitution*, especially Chaps. i, vi ix. The growth of the cabinet is well described in Blauvelt, *Development of Cabinet Government in England*; and two monographs of value are P. le Vasseur, *Le cabinet britannique sous la reine Victoria* (Paris, 1902), and W. Evans-Gordon, *The Cabinet and War* (London, 1904). Authoritative and interesting discussions are to be found in Gladstone, *Gleanings of Past Years*, I; Lord Rosebery, *Robert Peel* (London, 1899); J. Morley, *Walpole* (London, 1899); *ibid.*, *Life of William Ewart Gladstone* (London, 1903), II–III. A. West, "No. 10 Downing Street" in *Cornhill Mag.*, Jan., 1904; "Editor," Cabinet Government," in *Edinb. Rev.*, Oct., 1915; and A. V. Dicey, "Comparison between Cabinet Government and Presidential Government," in *Nineteenth Cent.*, Jan., 1919, are informing articles. For an extended bibliography, see *Select List of Books on the Cabinets of England and America* (Washington, 1903), compiled in the Library of Congress under the direction of A. P. C. Griffin.

the formation, in 1915, of a "coalition" cabinet, which got away from the usual party basis and brought together representatives of all parties, who undertook to sink their differences in a common leadership of the nation in its great crisis. The coalition served many useful purposes. But experience showed that a cabinet of twenty-three members, whatever might be said for it in times of peace, was not adapted to the expeditious and successful management of a nation's affairs in time of war. The upshot was a drastic and somewhat spectacular reorganization in December, 1916, which resulted in the displacement of the large coalition cabinet by a "war-cabinet" of five members. Naturally, the coalition principle was maintained, and the new cabinet — consisting of Mr. Lloyd George, the prime minister; Lord Curzon, President of the Council; Lord Milner and Mr. Henderson, ministers without portfolio; and Mr. Law, Chancellor of the Exchequer and Government leader in the House of Commons — was composed of one Liberal, one Labor member, and three Unionists.

From as far back as 1904 there had been a cabinet committee on imperial defense,[1] and in 1915–16 this body, renamed the "war committee," was several times reorganized. It rendered valuable service, and its recommendations were practically certain to be adopted by the cabinet. But, starting with five or six members, it grew to be almost as large as the cabinet itself; and the action taken in December, 1916, was intended to restore deliberation upon military policy to a small, workable group. It was intended also to vest this critically important function in a body which should have the power to act upon its own decisions, and withal upon a body composed of men who should not be obliged to formulate great policies amidst the distractions of administrative and parliamentary duties. Hence the decision to merge the war committee in a new sort of cabinet — a cabinet of five members, of whom only one should hold an important administrative office. The prime minister was to relinquish his personal leadership in the House of Commons, in order to give his entire time to the general problems of the war.

Under this plan the organic separation of powers which really is present in the English system of government became a personal separation also.[2] Parliament considered and passed legislative

[1] This committee, indeed, was reorganized in the year mentioned from a "committee on national defense" first appointed in 1895. H. E. Egerton, "The Committee of Imperial Defense," in *Polit. Quar.*, Feb., 1915.

[2] See p. 56.

and fiscal measures in the absence of all, or practically all, of the cabinet officers — even though there never was a time when the actions of the houses were so completely dictated by the cabinet. The cabinet confined itself substantially to determination of policy relating to the conduct of the war, and to the exercise of broad executive powers, which it wielded with a minimum of restraint from Parliament. The work of administration was carried on by ministers and boards that, standing quite outside of the cabinet, had no direct voice in the framing of either executive or legislative policy. It was mainly because of this new isolation of each part of the government from the other parts that the arrangements for cabinet records and communications already referred to were introduced.[1] A secretariat was organized; minutes were systematically kept; and full information was promptly sent to every minister who was affected by a decision reached. Furthermore, the practice of admitting ministers and other outsiders to a share in the discussions was early adopted; and publicity of a sort never before known was provided for through the publication of annual cabinet reports.[2]

With its membership increased to six, and with occasional changes in personnel, the war cabinet continued at the head of the government throughout the remainder of the conflict and for almost a year after the armistice. Furthermore, in 1917 the prime ministers of the five self-governing colonies, together with representatives of India, were invited to attend a series of special meetings of the body, held in conjunction with a new Imperial conference; and thus arose the novel and interesting "Imperial war cabinet," which held two subsequent series of meetings in the summer and autumn of 1918.[3] These reconstructions were accomplished by entirely informal and extra-legal processes. Cabinet government in England rests on convention, and can be modified, and even revolutionized, without changes in the law. Hence no act of Parliament was passed, and no proclamation or order in council was issued, establishing, or even announcing, the new machinery. General Smuts, representing the South African Union, sat as a member of the smaller British

[1] See p. 102.

[2] These reports were printed as parliamentary papers: *Report of the War Cabinet for the Year 1917* (Cd. 9005, 1918), and *Report of the War Cabinet for 1918* (Cd. 325, 1919).

[3] *Report of the War Cabinet for 1917*, 5–10. On the Imperial conference see *Extracts from Minutes of Proceedings and Papers Laid before the Conference* [of 1917]. Cd. 8566, 1917. Documentary materials relating to the sessions of 1918 are presented in Cd. 9177, 1918.

war cabinet from the summer of 1917 to the end of 1918, although he was, of course, neither a minister nor a member of Parliament. But again no law was violated; for it is only custom that requires cabinet officers to be members of Parliament.

The war cabinet's methods of work are fully described, not only in its published reports, but in certain speeches of its members on the floor of Parliament.[1] The body met every day, often two or three times a day, and hence, for all practical purposes, was in session continuously. Part of the time was given to hearing reports, including a daily summary of the military situation. Part was given to discussion of military policy and of public questions, participated in by the members alone and behind closed doors. But most of the sittings were taken up largely with hearings and discussions, attended and participated in by ministers, military and naval experts, and persons of many sorts and connections who were invited to appear. Thus, if the *agenda* of the day called for a consideration of diplomatic questions, the Secretary of State for Foreign Affairs, accompanied perhaps by one or more of his under-secretaries or other aids and subordinates, would be likely to be present. "The majority of the sessions of the war cabinet," says the *Report* for 1917, "consist, therefore, of a series of meetings between members of the war cabinet and those responsible for executive action at which questions of policy concerning those departments are discussed and settled. Questions of overlapping or conflict between departments are determined and the general lines of policy throughout every branch of the administration coördinated so as to form part of a consistent war plan. Ministers have full discretion to bring with them any experts, either from their own departments or from outside, whose advice they consider would be useful."[2] In pursuance of this work of coördination, scores of special committees were set up, consisting usually of the heads of the departments most concerned, under the chairmanship of a member of the war cabinet.[3] Finally, it is to be observed that all of the principal ministers were occasionally convoked in a "*plenum* of the cabinet" for the consideration of great public questions such as the Irish situation and the Representation of the People Bill, although even on these matters the final choice of policy lay with the war cabinet.

[1] Notably one by Lord Curzon in the House of Lords on June 19, 1918 (*Parl. Deb., 5th series, Lords*, xxx, 263 ff.).

[2] Cd. 9005, 1918, p. 2.

[3] For example, the war priorities committee, the economic defense and development committee, the committee on home affairs, and the demobilization committee.

So long as hostilities continued, the war cabinet had, indeed the powers of an autocrat. It recognized an ultimate responsibility to the House of Commons. But it was practically independent, and it is doubtful whether it could have been overthrown. Parliament, already shorn of real initiative, and heavily depleted by war service, became a mere machine for the registration of executive edicts. After the armistice, however, the situation changed. Criticism of the war cabinet as an arbitrary "junto," long repressed, broke forth; and the new parliament elected in December, 1918, although containing a huge Government majority, showed much independence of spirit. The end of the war cabinet began to be both prophesied and demanded, and the premier himself intimated that such a change was not unlikely to come.[1] After the Peace Conference convened at Paris, in January, 1919, only three members of the governing group were left in England; and Mr. Law — who in the absence of Mr. Lloyd George acted as a sort of deputy prime minister, began to summon ministerial conferences attended by twenty or thirty persons, and therefore bearing a strong resemblance to the cabinet of pre-war days. Upon resuming the reins in Downing Street, in midsummer, Mr. Lloyd George made it known that the war cabinet was soon to be superseded; and for some weeks the details of the impending reorganization absorbed much of his thought. The cabinet in its new form had served a useful purpose. But it was not conspicuously successful in coördinating the work of the different departments, and it virtually abrogated the principle of the collective responsibility of the ministers for the acts of the Government. Its abandonment, in its present form at all events, was almost universally desired.

The contemplated reconstruction raised, however, two difficult questions. How large should the reorganized cabinet be made? And should the principle of party solidarity within the cabinet be revived? Even if only the ministers who were heads of departments were brought in, there would be thirty members. But pre-war cabinets had never contained more than twenty-two persons; that number had usually been considered too large; the political history of 1915–16 had vividly demonstrated the disadvantages of a large cabinet; and the Machinery of

[1] In announcing the new coalition government formed after the elections he said (January 10, 1919) that the war cabinet would be continued until there should have been "more time to make permanent peace arrangements." London *Times*, Jan. 11, 1919.

Government Committee of the Ministry of Reconstruction was urging that for the proper performance of its functions the cabinet should consist of not more than twelve — indeed, preferably ten — members.[1] Mr. Lloyd George's own idea was that only twelve of the most important department heads should be admitted, which would mean a cabinet of the same size as that over which Disraeli presided in 1874–80. He found it not feasible to adhere to this plan, however, and as the new cabinet gradually took form, in October, 1919, it steadily approached the proportions of pre-war days and finally attained a membership of twenty. The secretariat set up in 1915 was wisely preserved, and formal records of proceedings, although not published, continue to be kept. It is unlikely that the old methods of transacting business will ever be restored, and in that case the war cabinet experiment will have had lasting and wholesome results. To the date of writing (1920), however, the coalition principle has been maintained; so that the cabinet system does not yet function as it formerly did, although there are growing indications that cabinets formed with a view to party unity will presently reappear.[2]

[1] See p. 89.

[2] On the war cabinet see J. A. Fairlie, *British War Administration* (New York, 1919), 31–58 (also in *Mich. Law Rev.*, May, 1918); R. Schuyler, "The British War Cabinet," in *Polit. Sci. Quar.*, Sept., 1918, and "The British Cabinet, 1916–1919," *ibid.*, Mar., 1920; A. V. Dicey, "The New English War Cabinet as a Constitutional Experiment," in *Harvard Law Rev.*, June, 1917; H. W. Massingham, "Lloyd George and his Government," in *Yale Rev.*, July, 1917; Anon., "The Recent Political Crisis," in *Quar. Rev.*, Jan., 1917; S. Low, "The Cabinet Revolution," in *Fortn. Rev.*, Feb., 1917; F. Piggott, "The Passing of the Cabinet," in *Nineteenth Cent.*, Feb., 1917; H. Spender, "The British Revolution," in *Contemp. Rev.*, May, 1917; *London Times Hist. and Cyclop. of the War*, Parts lx and cxxvii; J. Barthélemy, "La gouvernement par les spécialistes et la recénte experience anglaise" in *Rev. Sci. Polit.*, Apr., 1918. The reports of the cabinet for 1917 and 1918 have been cited (p. 108, note 2).

CHAPTER VIII

PARLIAMENT: THE HOUSE OF COMMONS

THE Parliament which sits at Westminster is not only the chief organ of English democracy but the oldest, the largest, and the most powerful of modern legislative assemblages; it is, withal, in a very true sense, the mother of parliaments. Speaking broadly, it originated in the thirteenth century, became definitely organized in two houses in the fourteenth century, wrested the control of the nation's affairs from the king in the seventeenth century, and underwent a thoroughgoing democratization in the nineteenth and twentieth centuries. The jurisdiction which, step by step, the two houses have acquired has been broadened until it includes practically the whole domain of government; and within this enormous expanse of political control the power of the chambers is, as we have seen, absolutely unrestricted, in law and in fact. "The British Parliament, . . ." writes Bryce, "can make and unmake any and every law, change the form of government or the succession to the crown, interfere with the course of justice, extinguish the most sacred private rights of the citizen. Between it and the people at large there is no legal distinction, because the whole plenitude of the people's rights and powers resides in it, just as if the whole nation were present within the chamber where it sits. In point of legal theory it is the nation, being the historical successor of the folk moot of our Teutonic forefathers. Both practically and legally, it is to-day the only and the sufficient depository of the authority of the nation; and it is therefore, within the sphere of law, irresponsible and omnipotent."[1] Whether the business in hand is constituent or legislative, whether ecclesiastical or temporal, the right of Parliament to discuss and to dispose is incontestable. In order to understand how England is governed it is, therefore, necessary to give much attention to Parliament: and in order to appreciate the fullness of English political democracy one must know something of the long historic process by which this

[1] *American Commonwealth* (3 ed.), I, 35–36.

all-powerful Parliament — at all events the House of Commons — has been made completely representative of the people.

Present Composition. — "When," wrote Spencer Walpole a quarter of a century ago, "a minister consults Parliament he consults the House of Commons; when the Queen dissolves Parliament she dissolves the House of Commons. A new Parliament is simply a new House of Commons."[1] The gathering of the "representatives of the commons" at Westminster is indeed, and has long been, without question the most important single agency of government in the kingdom. The chamber is at the same time the chief repository of power and the prime organ of the popular will. It is in consequence of its prolonged and arduous development that Great Britain has attained democracy in national government; and the influence of English democracy, as actualized in the House of Commons, upon the political ideas and the governmental forms of the outlying world, both English-speaking and non-English-speaking, is incalculable.

The House of Commons consists to-day of 707 members, of whom 492 sit for English constituencies, 36 for Welsh, 74 for Scottish, and 105 for Irish. Fifteen of the members are chosen, under somewhat special arrangements, to represent the principal universities. The remaining 692 are elected in county or borough constituencies — 372 in the former and 320 in the latter — under a suffrage law which falls not far short of being the most democratic in the world. The regulations governing the qualifications for election are simple and liberal. There was once a residence qualification. But in the eighteenth century it was replaced by a property qualification, which, however, in 1858 was in its turn swept away.[2] Oaths of allegiance and oaths imposing religious tests formerly debarred many persons from candidacy. But all that is now required of a member is a very simple oath or affirmation of allegiance, in a form compatible with any shade of religious belief or unbelief. Any British subject who is of age is qualified for election by any constituency to which he [or she] chooses to offer himself [or herself] as a candidate, unless he [or she] belongs to one of a few small groups — chiefly peers (except Irish); clergy of the Roman Catholic

[1] *The Electorate and the Legislature* (London, 1892), 48.

[2] The rule requiring county members to be residents of the counties they represented was formally abolished in 1774. From 1710 to 1858 the property qualification required of county members was £600 a year, in possession or expectancy, derived from the ownership of land; the qualification of borough members was £300.

Church, the Church of England, and the Church of Scotland; holders of offices under the crown created since the adoption of the Act of Security[1] in 1705 (except ministerial posts); bankrupts; lunatics; government contractors; persons convicted of treason, felony, or corrupt practices.

Women first became eligible to sit in the House of Commons as a result of legislation supplementary to the Representation of the People Act of February 6, 1918, described below.[2] No sooner was this measure, which enfranchised six million women, on the statute book than the question arose whether its effect was to make women eligible for election. The law officers of the crown took a negative view. Prospective women candidates, however, appeared; the Labor party pronounced in favor of female eligibility; and the House of Commons, by a vote of 274 to 25, declared desirable the immediate passage of a bill on the subject. Opposition was half-hearted, and such serious discussion as took place centered around the question of amending the bill so as to admit women to various professions hitherto closed against them. In the House of Lords it was suggested that the measure should be amended to enable peeresses in their own right to sit and vote in the second chamber; but the view prevailed that this subject should be left for separate legislation, and in November, 1918, the Qualification of Women Act as it came from the House of Commons was carried through its final stages. At the elections of the following month, one woman candidate was successful, although, being a Sinn Feiner, she did not take her seat.[3] The first woman who actually served as a member of Parliament was Lady Astor, the American-born wife of Viscount Astor. After a spirited campaign, she, as a Unionist candidate, defeated her Liberal and Labor rivals in a by-election on November 15, 1919. It is to be observed that whereas qualified women may vote at the age of thirty and upwards, the act of 1918 fixes no age limit for election to the chamber.

A relic of the days when the local gentry had to be compelled to serve in Parliament is the curious rule which forbids a member to resign his seat. A member may be expelled; but the only way in which he can retire from the House voluntarily before a general election is to accept some public office whose occupant,

[1] This measure attempted the compromise which was carried out in the Succession to the Crown Act — commonly known as the Place Act — of 1707. See p. 97, note 3.

[2] See pp. 129–134.

[3] See p. 320.

under the Place Act of 1707,[1] is *ipso facto* disqualified. The office usually sought for this purpose is that of steward or bailiff of His Majesty's three Chiltern Hundreds of Stoke, Desborough, and Burnham, in the county of Bucks. Centuries ago, this officer was appointed by the crown to look after certain forests frequented by brigands. The brigands are long since dead, and the forests themselves have been converted into parks and pasture lands, but the stewardship remains. The member who wishes to give up his seat applies for this, or for some other old office with nominal duties and emoluments, receives it and thereby disqualifies himself, and then resigns it. On a number of occasions the stewardship of the Chiltern Hundreds has been granted twice, and resigned as often, on the same day.[2]

Problem of Electoral Reform in the Early Nineteenth Century. — Despite her parliamentary institutions, her traditional principles of local self-government, and her historic guarantees of individual liberty, England at the opening of the nineteenth century was in no true sense a democratic country. Not only was society organized upon an essentially aristocratic basis, but government likewise was controlled by, and largely in the interest of, the few of higher station. One branch of Parliament was composed entirely of clerical and hereditary members; the other, of members elected under franchise arrangements which were illiberal, or appointed outright by closed corporations or by individual magnates. Not only the men who made the laws, but the officers who executed them, and the judges in whose tribunals they were interpreted and applied, were selected in accordance with procedure in which the mass of the people had no part. The agencies of local government, whether in county or in borough, were as a rule oligarchical, and privilege and class distinction pervaded the whole of the political system. The ordinary man was called upon to obey laws and to pay taxes voted without his assent, to submit to industrial, social, and ecclesiastical regulations whose making, repeal, and amendment he had no effective means of influencing — in short, to support a government which was beyond his power to control.

The problem of parliamentary reform was threefold. The first question was that of the suffrage. Originally the representatives of the counties were chosen in the county court by all persons who were entitled to attend and to take part in the

[1] See p. 97.

[2] *Report from the Select Committee on House of Commons (Vacating of Seats)*, 1894.

proceedings of that body. In 1429, during the reign of Henry VI, an act was passed, ostensibly to prevent riotous and disorderly elections, which stipulated that county electors should thereafter include only such male residents of the county as possessed "free land or tenement" which would rent for as much as forty shillings a year above all charges.[1] Leaseholders, copyholders, small freeholders, and all non-landholders were denied the suffrage altogether. Even in the fifteenth and sixteenth centuries the number of forty-shilling freeholders was small. With the concentration of land in fewer hands, resulting from the agrarian revolution of the eighteenth and early nineteenth centuries,[2] it bore a steadily decreasing ratio to the aggregate county population, and by 1832 the county electors included, as a rule, only a handful of large landed proprietors. In the boroughs the franchise arrangements existing at the date mentioned were complicated and diverse beyond possibility of general characterization. Many of the boroughs had been given parliamentary representation by the most arbitrary and haphazard methods, and at no time before 1830 was general legislation enacted to regulate the conditions of voting within them. There were "scot and lot" boroughs, "potwalloper" boroughs, burgage boroughs, corporation or "close" boroughs, and "freemen" boroughs, to mention only the more important of the types that can be distinguished. In some of these the franchise was, at least in theory, reasonably democratic; but in most of them it was restricted by custom or local regulation to petty groups of property-holders or taxpayers, to members of the municipal corporations, or even to members of a favored gild. With few exceptions, the borough franchise was illogical, narrow, and non-expansive.

Another problem was that arising from the astounding prevalence of illegitimate political influence and of sheer corruption. Borough members were frequently not representatives of the people at all, but nominees of peers, of influential commoners, or of the government. It has been estimated that of the 472 borough members, not more than 137 can be regarded as having been in any proper sense elected. The remainder sat for "rotten" boroughs, or for "pocket" boroughs whose populations were so meager or so docile that the borough might, as it were, be carried about in a magnate's pocket. In the whole of Cornwall there

[1] Equivalent in present values to £30 or £40, *i.e.*, $150 or $200.

[2] See F. A. Ogg, *Economic Development of Modern Europe* (New York, 1917), Chap. vi.

were only one thousand voters. Of the forty-two seats to which that section of the country was entitled, twenty were controlled by seven peers, twenty-one were similarly controlled by eleven commoners, and only one was filled by free election. In 1780 the Duke of Richmond asserted that a clear majority of the House of Commons was returned by not more than six thousand persons. Bribery and other forms of corruption were so common that only the most shameless instances attracted attention. Not merely votes, but seats, were bought and sold openly, and it was generally understood that £5000 to £7000 was the amount which a political aspirant might expect to have to pay a borough-monger for bringing about his election. Seats were advertised for sale in the public prints, and even for hire for a term of years.[1]

The Problem of Redistribution of Seats. — The third question was that of a redistribution of seats. The constitution of the United States requires a reapportionment of seats in the House of Representatives after each decennial census, and in France there is such a redistribution every five years. The object is, obviously, to preserve substantial equality among the electoral constituencies, so that a vote will count for as much in one place as in another. Curiously, there has never been in England, in either law or custom, a requirement of this kind. Reapportionments have been few and irregular, and most of the time the constituencies represented at Westminster have been very unequal in size. Save that, in 1707, forty-five members were added to represent Scotland and, in 1801, one hundred to sit for Ireland, the constituencies represented in the Commons continued almost unchanged from the reign of Charles II to the reform of 1832. Changes of population in this extended period were, however, enormous. In 1689 the population of England and Wales was not in excess of 5,500,000. The census of 1831 revealed in these countries a population of 14,000,000. In the seventeenth and earlier eighteenth centuries the great mass of the English people lived in the south and east. Liverpool was but an insignificant town, Manchester a village, and Birmingham a sand-hill. But the industrial revolution had the effect of bringing coal, iron, and water-power into enormous demand, and after 1775 the industrial center, and likewise the popula-

[1] For an interesting sketch of "unreformed electioneering" see C. Seymour and D. P. Frary, *How the World Votes* (Springfield, 1918), I, 91–112. "This house," said Pitt on the floor of the Commons in 1783, "is not the representative of the people of Great Britain; it is the representative of nominal boroughs, of ruined and exterminated towns, of noble families, of wealthy individuals, of foreign potentates."

tion center, of the country shifted rapidly toward the north. In the hitherto almost uninhabited valleys of Lancashire and Yorkshire sprang up a multitude of factory towns and cities. In Parliament these fast-growing populations were either glaringly under-represented or not represented at all. In 1831 the ten southernmost counties of England contained a population of 3,260,000 and returned to Parliament 235 members.[1] At the same time the six northernmost counties contained a population of 3,594,000, but returned only 68 members. Cornwall, with 300,000 inhabitants, had 42 representatives; Lancashire, with 1,330,000, had 14. Among towns, Birmingham and Manchester, each with upwards of 100,000 people, and Leeds and Sheffield, each with 50,000, had no representation whatever. On the other hand, boroughs were entitled to representation which contained ridiculously small populations, or even no settled population at all. Gatto, in Surrey, was a park; Old Sarum, in Wiltshire, was a deserted hill; the remains of what once was Dunwich were under the waves of the North Sea. Bosseney, in Cornwall, was a hamlet of three cottages, eight of whose nine electors belonged to a single family. But Bosseney sent two members to the House of Commons.[2]

The Reform Act of 1832. — Demand for a reconstruction of the electoral system antedated the nineteenth century. As early as 1690, John Locke denounced the absurdities of the prevailing arrangements,[3] although they were then rather less glaring than they came to be by 1832; and during the second half of the eighteenth century a number of interesting reform proposals — notably that of the elder Pitt in 1766, that of Wilkes in 1776, and that of the younger Pitt in 1785 — were widely though fruitlessly discussed. In 1780 a group of public-spirited men established a Society for Constitutional Information which during the following decade carried on active propaganda in

[1] That is to say, the quota of members mentioned was returned by the counties as such, together with the boroughs contained geographically within them.

[2] The monumental treatise on the House of Commons prior to 1832 is E. Porritt, *The Unreformed House of Commons: Parliamentary Representation before 1832*, 2 vols. (2d ed., Cambridge, 1909). On the prevalence of corruption see May and Holland, *Constitutional History of England*, I, 224–238, 254–262, and Seymour and Frary, *How the World Votes*, I, Chaps. iv–v.

[3] *Two Treatises of Government*, ed. by H. Morley (2d ed., London, 1887), 274–275, "To what gross absurdities," said Locke, "the following of custom, when reason has left it, may lead, we may be satisfied when we see the bare name of a town of which there remains not so much as the ruins, where scarce so much housing as a sheepcote or more inhabitants than a shepherd is to be found, sends as many representatives to the grand assembly of lawmakers as a whole county numerous in people and powerful in riches."

behalf of parliamentary regeneration, and at a meeting under the auspices of this organization and presided over by Fox a program was drawn up calling for innovations no less sweeping than the establishment of manhood suffrage, the creation of equal electoral districts, the payment of members, the abolition of property qualifications for members, and adoption of the secret ballot.[1] The revolution in France and the contest with Napoleon slowed up the reform movement, but after 1815 agitation was renewed. The economic and social ills of the nation in the decade following the restoration of peace were many, and the idea took wide hold that only through a reconstruction of Parliament could adequate measures of amelioration be secured. The Tory governments of the period were disposed to resist the popular demand, or, at the most, to concede changes that would not affect the aristocratic character of the parliamentary chambers. But the reformers refused to be diverted from their fundamental object, and in the end the forces of tradition and conservatism were obliged to give way.[2]

The first notable triumph was the Reform Act of 1832. The changes wrought by this memorable piece of legislation were two-fold, the first relating to the distribution of seats in Parliament, the second to the extension of the suffrage. The number of Scottish members was increased from 45 to 54; that of Irish, from 100 to 105; that of English and Welsh was reduced from 513 to 499. There was no general reapportionment of seats, no effort to bring the parliamentary constituencies into precise and uniform relation to the census returns. Yet the grossest inequalities were remedied. Fifty-six boroughs, of populations under 2000, were deprived of representation;[3] thirty-one, of populations between 2000 and 4000, were reduced from two members to one; and one was reduced from four members to two. The 143 seats thus made available were redistributed, and the aggregate number (658) continued as before. Twenty-

[1] It is interesting to observe that every one of these demands found a place half a century later among the "six points" of the Chartists. See p. 120. A bill embodying the proposed reforms was introduced by the Duke of Richmond in 1780, but met with small favor. A second society — The Friends of the People — was formed in 1792 to promote the cause.

[2] The reform movement up to 1832 is sketched in May and Holland, *Constitutional History of England*, I, 264–280. The best systematic account is G. S. Veitch, *The Genesis of Parliamentary Reform* (London, 1914). See also G. L. Dickinson, *Development of Parliament during the Nineteenth Century* (London, 1895), Chap. i; J. H. Rose, *Rise and Growth of Democracy in Great Britain* (London, 1897), Chap. i; C. B. R. Kent, *The English Radicals* (London, 1899), Chaps. i–ii; and W. P. Hall, *British Radicalism, 1791–1797* (New York, 1912).

[3] Of the fifty-six all save one had returned two members.

two large boroughs hitherto unrepresented were given two members each; twenty-one others were given one additional member each; and sixty-five seats were allotted to twenty-seven of the English counties, the remaining thirteen being given to Scotland and Ireland. The redistribution had the effect of increasing greatly the political power of the northern and north-central portions of the country.

The alterations made in the suffrage were numerous and important. In the counties the forty-shilling freehold franchise was retained; but the voting privilege was extended to all leaseholders and copyholders of land renting for as much as £10 a year, and to tenants-at-will holding an estate worth £50 a year. In the boroughs the right to vote was conferred upon all "occupiers" of houses worth £10 a year. The total number of persons enfranchised was approximately 455,000. By basing the suffrage exclusively upon the ownership or occupancy of property of considerable value, the reform fell short of admitting to political power the great mass of factory employees and of agricultural laborers, and for this reason the bill was denounced by the more liberal elements. If, however, the privilege of voting had not been extended to the masses, it had been brought appreciably nearer them; and — what was almost equally important — it had been made substantially uniform, for the first time, throughout the realm.[1]

The Representation of the People Act of 1867. — The act of 1832 contained none of the elements of finality. Its authors were, in general, content; but with the lapse of time it became manifest that the nation was not. Political power was still confined to the magnates of the kingdom, the townsfolk who were able to pay a £10 annual rental, and the well-to-do copyholders and leaseholders of rural districts. Whigs and Tories of influence alike insisted that farther change could not be contemplated, but the radicals and the laboring masses insisted no less resolutely that the reformation which had been begun should be carried to its logical conclusion. The demands chiefly emphasized were gathered up in the "six points" of the People's Charter, promulgated in definitive form May 8, 1838. The six points were: (1) universal suffrage for males over twenty-one years of age, (2) equal electoral districts, (3) secret ballot, (4) annual sessions of Parliament, (5) abolition of property qualifications for members of the House of Commons, and (6)

[1] The more important parts of the text of the Reform Act of 1832 are printed in Robertson, *Statutes, Cases, and Documents*, 197–212.

payment of members. The barest enumeration of these demands is sufficient to reveal the political backwardness of the England of three quarters of a century ago. Not only was the suffrage still severely restricted and the basis of representation antiquated and unfair; voting was oral and public, and only men who were qualified by the possession of property were eligible for election.[1]

After a decade of spectacular propaganda Chartism collapsed, without having attained tangible results. None the less, the day was not long postponed when the forces of reform, sobered and led by practical statesmen, were able to realize one after another of their fundamental purposes. In 1858 the second Derby government agreed to the abolition of property qualifications for members, and after 1860 projects for franchise extension were considered with new seriousness. In 1867 a third Derby government, whose guiding spirit was Disraeli, carried a bill providing for a more comprehensive electoral reform than anybody except the ultra-radicals had expected, or perhaps desired. This Representation of the People Act modified, indeed, but slightly the distribution of parliamentary seats. The total number of seats remained unchanged, as did Ireland's quota of 105; Scotland's apportionment was increased from 54 to 60, while that of England and Wales was decreased from 499 to 493. Eleven boroughs lost the right of representation and thirty-five others were reduced from two members to one, the fifty-two seats thus vacated being utilized to enfranchise twelve new borough and three university constituencies and to increase the representation of a number of the more populous towns and counties.

The most important provisions of the Act were, however, those relating to the franchise. In England and Wales the county franchise was given to men whose freehold was of the value of forty shillings a year, to copyholders and leaseholders of the annual value of £5, and to householders whose rent amounted to not less than £12 a year. The twelve-pound occupation franchise was new, and the qualification for copyholders and leaseholders was reduced from £10 to £5; otherwise the county franchise was unchanged. The borough franchise was modified

[1] Rose, *Rise and Growth of Democracy*, Chaps. vi–viii; Kent, *The English Radicals*, Chap. iii; R. G. Gammage, *History of the Chartist Movement*, 1837–1854 (Newcastle-on-Tyne, 1894); M. Hovell, *The Chartist Movement* (New York, 1918); F. F. Rosenblatt, *The Chartist Movement in its Social and Economic Aspects* (New York, 1916); H. U. Faulkner, *Chartism and the Churches* (New York, 1916); P. W. Slosson, *The Decline of the Chartist Movement* (New York, 1916).

profoundly. Heretofore persons were qualified to vote as householders only in the event that their house was worth as much as £10 a year. Now the right was conferred upon every man who occupied, as owner or as tenant, for twelve months, a dwelling-house, or any portion thereof utilized as a separate dwelling, without regard to its value. Another newly established franchise admitted to the voting privilege all lodgers occupying for as much as a year rooms of the clear value, unfurnished, of £10 a year. The effect of these provisions was to enfranchise the urban working population, even as the act of 1832 had enfranchised principally the urban middle class. As originally planned, Disraeli's measure would have enlarged the electorate by not more than 100,000; as amended and carried, it practically doubled the voting population, raising it from 1,370,793 immediately prior to 1867 to 2,526,423 in 1871.[1] The act of 1832 enfranchised the middle classes; that of 1867 threw political power in no small degree into the hands of the masses. Only two large groups of people now remained outside the pale of political influence, *i.e.*, the agricultural laborers and the miners.

The Representation of the People Act of 1884 and the Redistribution Act of 1885. — That the qualifications for voting in one class of constituencies should be conspicuously more liberal than in another class was an anomaly, and in a period when anomalies were fast being eliminated from the English electoral system remedy could not be long delayed. On February 5, 1884, the second Gladstone ministry redeemed a campaign pledge by introducing a bill extending to the counties the same electoral regulations that had been established in 1867 in the towns. The measure passed the Commons, but was rejected by the Lords because it was not accompanied by a bill for the redistribution of seats. Agreement between the two houses averted a deadlock, and before the end of the year the Lords accepted the Government's bill, on the understanding that its enactment was to be followed immediately by the introduction of a redistribution measure.

The Representation of the People Act of 1884 is in form disjointed and difficult to understand, but its effect is easy to state. In the first place, it established a uniform household franchise

[1] It is to be observed that these figures are for the United Kingdom as a whole, and therefore embrace the results not only of the act of 1867 applying to England and Wales, but of the two acts of 1868 introducing similar, although not identical, changes in Scotland and Ireland.

and a uniform lodger franchise in all counties and boroughs of the United Kingdom. The occupation of any land or tenement of a clear annual value of £10 was made a qualification in boroughs and counties alike; and persons occupying a house by virtue of office or employment were to be deemed "occupiers" for the purpose of the act. The measure doubled the county electorate, and increased the total electorate by some 2,000,000, or approximately forty per cent. Its most important effect was to enfranchise the workingman in the country, as the act of 1867 had enfranchised the workingman in the town.

In 1885, the two great parties coöperating, the Redistribution of Seats Act which had been promised was passed. For the first time in English history attempt was made to apportion representation in the House of Commons in something like strict accordance with population densities. The total number of members was increased from 658[1] to 670, and of the number 103 were allotted to Ireland, 72 to Scotland, and 495 to England and Wales. The method by which former redistributions had been accomplished, *i.e.*, transferring seats more or less arbitrarily from flagrantly over-represented boroughs to more populous boroughs and counties, was replaced by a plan based upon the principle of equal electoral constituencies, each returning one member. This principle was not carried out with mathematical exactness; indeed, considerable inequalities survived the rearrangement. But the situation was made vastly better than before.

In theory a constituency was made to comprise 50,000 people. Boroughs containing fewer than 15,000 inhabitants were disfranchised as boroughs, becoming for electoral purposes mere portions of the counties in which they were situated. Boroughs of between 15,000 and 50,000 inhabitants were allowed to retain, or if previously unrepresented were given, one member each. Those of between 50,000 and 165,000 were given two members, and those of more than 165,000 three, with one in addition for every additional 50,000 people. The same general principle was followed in the counties. Thus the city of Liverpool, which prior to 1885 sent three members to Parliament, fell into nine distinct constituencies, each returning one member, and the great northern county of Lancashire, which since 1867 had been divided into four portions each returning two members,

[1] Strictly 652, since after 1867 four boroughs, returning six members, were disfranchised.

was now split into twenty-three divisions with one member each.[1]

Electoral Questions, 1885–1918: Manhood Suffrage, Plural Voting, and Redistribution. — The measures just described stood on the statute book practically without change until 1918. During this long period England properly regarded her government as democratic; and it was so considered by the rest of the world. Nevertheless, even the House of Commons, which was the most democratic part of the national government, was not so broadly representative of the nation as it might have been. Wherein it was lacking will be explained briefly in this and the following section; then will be told how, in the midst of the war, a great parliamentary statute was passed to remedy the situation.

In the first place, the suffrage was defined entirely in terms of relation to property. One voted, not as a person or citizen, but as an owner, occupier, or user of houses, lands, or other property. The voter did not have to *own* property; and occupational requirements were, as we have seen, comparatively easy to meet. Nevertheless the laws governing the exercise of both the parliamentary and local suffrages were so complicated that only lawyers professed to understand them; and their net effect was to exclude some two million adult males from taking part in the election of parliamentary members. "The

[1] On the reforms of the period 1832–85 see *Cambridge Modern History*, X, Chap. xviii, and XI, Chap. xii; Dickinson, *Development of Parliament*, Chap. II; Rose, *Rise and Growth of Democracy*, Chaps. ii, x xiii; Marriott, *English Political Institutions*, Chap. x. An excellent survey is May and Holland, *Constitutional History of England*, I, Chap. vi, and III, Chap. i. The best treatise on the general subject is C. Seymour, *Electoral Reform in England and Wales, 1832–1885* (New Haven 1915), and the best full accounts of the reform of 1832 are J. R. M. Butler, *The Passing of the Great Reform Bill* (New York, 1914), and G. M. Trevelyan, *Earl Grey and the Reform Bill* (London, 1920). Mention may be made of H. Cox, *History of the Reform Bills of 1866 and 1867* (London, 1868); J. S. Mill, *Considerations on Representative Government* (London, 1861); and T. Hare, *The Election of Representatives, Parliamentary and Municipal* (3d ed., London, 1865). An excellent survey by a Swiss scholar is C. Borgeaud, *The Rise of Modern Democracy in Old and New England*, trans. by B. Hill (London, 1894), and a useful volume is J. Murdock, *A History of Constitutional Reform in Great Britain and Ireland* (Glasgow, 1885). The various phases of the subject are covered in the general histories of the period, notably S. Walpole, *History of England from the Conclusion of the Great War in 1815*, 6 vols. (new ed., London, 1902); W. N. Molesworth, *History of England from the year 1830–1874*, 3 vols. (London, 1874); J. F. Bright, *History of England*, 5 vols. (London, 1875–94); H. Paul, *History of Modern England*, 5 vols. (London, 1904–06); and S. Low and L. C. Sanders, *History of England during the Reign of Victoria* (London, 1907). Three biographical works are of special service: S. Walpole, *Life of Lord John Russell*, 2 vols. (London, 1889); J. Morley, *Life of William E. Gladstone*, 3 vols. (London, 1903); and W. F. Monypenny and G. E. Buckle, *Life of Benjamin Disraeli, Earl of Beaconsfield*, 6 vols. (New York, 1910–20).

present condition of the franchise," wrote Lowell in 1909, "is, indeed, historical rather than rational. It is complicated, uncertain, expensive in the machinery required, and excludes a certain number of people whom there is no reason for excluding; while it admits many people who ought not to be admitted if any one is to be debarred."[1] The first demand of electoral reformers was, accordingly, for a law that would simplify the existing system and at the same time make provision substantially for manhood suffrage.

The second demand was for the abolition of plural voting. The problem of the plural vote was an old one. Under existing laws an elector might not vote more than once in a single constituency, nor in more than one division of the same borough; but aside from this he was entitled to vote in every constituency in which he possessed a qualification. In the United States, and in practically all European countries, a man has only one vote; and any arrangement other than this seems to most people to violate the principle of civic equality which lies at the root of popular government. In England efforts have been many to bring about the adoption of the rule of "one man, one vote," but they have never been entirely successful. The number of plural voters — some 525,000 — was relatively small. But when it is observed that a single voter might cast during a parliamentary election as many as six or eight votes, it will not be wondered at that the number sufficed to turn the scale in many closely contested constituencies. An overwhelming proportion of the plural voters belonged to the Unionist party, whence it arose that the Liberals were solidly opposed to the privilege. In 1906, and on two or three occasions thereafter, a Liberal government carried through the House of Commons a bill abolishing plural voting.[2] But the Unionist majority in the House of Lords always blocked the reform.

A third question which aroused much discussion was a fresh apportionment of seats in the House of Commons. In the quarter-century following the act of 1885 the electoral districts again became very unequal. In 1912 the most populous constituency (the Romford division of the county of Essex) had 55,950 voters, while the least populous (the Irish borough of Kilkenny) had only 1690. The populations of the hundreds of county and borough constituencies throughout the United Kingdom fell at all points between these extremes. It was the Liberals who urged abolition of plural voting — because plural

[1] *Government of England*, I, 213.

[2] See pp. 128, 148.

voting benefited the Unionists. On the other hand, it was in the main the Unionists who urged a redistribution of seats — because the existing distribution worked advantageously for the Liberals. A Unionist redistribution measure in 1905 did not reach debate; and the several Liberal electoral proposals of the succeeding decade made no provision, beyond somewhat indefinite promises, for the reform.

A special difficulty inherent in this subject was the situation of Ireland. On account of the decline of Ireland's population during the nineteenth century, that portion of the United Kingdom had come to be heavily over-represented at Westminster. The average Irish commoner sat for but 44,147 people, while the average English member represented 66,971. If a new distribution were to be made in strict proportion to numbers Ireland would lose 30 seats and Wales three, while Scotland would gain one and England about 30. It was contended by the Irish people, however, that the Act of Union of 1800, which guaranteed Ireland as many as one hundred parliamentary seats, was in the nature of a treaty, whose terms could not be violated save by the consent of both contracting parties; and so long as the Irish were not allowed a separate parliament they could be depended upon to resist, as they did resist in 1905, any proposal to reduce their voting strength in the parliament of the United Kingdom.[1]

Electoral Questions, 1885–1918: Woman Suffrage. — An electoral question which thrust itself into the forefront of public discussion soon after the opening of the present century is woman suffrage. The history of this issue runs back hardly more than fifty years. The first notable attempt to induce Parliament to bestow the suffrage on properly qualified women was that of John Stuart Mill, who in 1867 vainly urged the adoption of a woman suffrage amendment to Disraeli's Representation of the People Act. A national society to promote the cause was organized in the same year; and in 1869 an act of Parliament conferred the suffrage in municipal elections upon all female taxpayers of England, Wales, and Scotland. From time to time for twenty years thereafter bills on the subject appeared in the House of Commons, but with little chance of success. A new chapter in the history of the movement was opened in 1903 by the organization of the Woman's Social and Political Union, under whose auspices an earnest and spectacular campaign was

[1] Much general information is presented in J. King and F. W. Raffety, *Our Electoral System; the Demand for Reform* (London, 1912).

carried on in the next decade. The first notable victory came in 1907, when considerable numbers of women not only were given the suffrage in local elections, but were made eligible to borough and county councils (except the London County Council) and to boards of guardians for the relief of the poor. Thereafter the campaign was directed specifically toward securing the parliamentary franchise. The first great object was to persuade or compel a ruling ministry, *i.e.*, "the Government," to introduce a suffrage measure, since bills presented by private members are unlikely to be passed if they deal with controversial matters.

This object was not attained until 1918. But meanwhile the cause was advertised, organized, and broadened until it gave promise of bringing the country to a genuine crisis. How the program grew is illustrated by the fact that whereas originally the demand was merely for the removal of the disqualification of women *as women* — in other words, for the enfranchisement of women upon the same terms, in respect to age, residence, and independent ownership or occupancy of property, as men — from about 1909 it was urged that substantially all adult women in the United Kingdom should be made voters. The first plan would have meant the enfranchisement of about two million women; the second, of ten million. A "conciliation" scheme, incorporated in a great electoral bill in 1910, proposed as a first step to bestow the franchise in parliamentary elections upon such women as were already permitted to vote in local elections — approximately one and one fourth millions. Proposals of every sort were blocked, however, during the pre-war years of the ministry of Mr. Asquith by the inflexible opposition of the premier and several of his colleagues, and by the consequent impossibility of getting before Parliament a government measure on the subject.[1]

Antecedents of the Representation of the People Act of 1918. — The Parliament Act of 1911,[2] which established exclusive control of the House of Commons over public finance and assured its increased preponderance in ordinary legislation, settled

[1] K. Schirmacher, *The Modern Woman's Rights Movement*, trans. by C. C. Eckhardt (New York, 1912), 58-96; B. Mason, *The Story of the Woman's Suffrage Movement* (London, 1911); E. S. Pankhurst, *The Suffragette; the History of the Woman's Militant Suffrage Movement, 1905–1910* (London, 1911); A. E. Metcalf, *Woman's Effort; A Chronicle of British Women's Fifty Years' Struggle for Citizenship* (New York, 1917). The subject is surveyed briefly in May and Holland, *Constitutional History*, III, 59–66. For a resumé of the spread of woman suffrage, see P. O. Ray, "Woman Suffrage in Foreign Countries," in *Amer. Polit. Sci. Rev.*, Aug., 1918, pp. 469–474.

[2] See p. 154.

the pressing question of the powers of the upper chamber and thus cleared the way for an early consideration of the problems of electoral reform; and during the summer of 1912 an important Government bill on this subject was introduced. Three chief changes were proposed: the expansion of the electorate to include practically all adult males, the abolition of plural voting, and the simplification of the system of registration. Woman suffrage was not included; and there was no provision for a redistribution of seats. The Government freely admitted that a redistribution was desirable, but said that it could not be carried out equitably until the composition and distribution of the electorate should have been fully determined. After a few months of intermittent debate the measure became so encumbered with amendments — most of them relating in one way or another to the enfranchisement of women — that the Speaker of the House of Commons ruled that a new bill would have to be prepared. Opposition, meanwhile, had developed in so many quarters, and the Government's energies were so largely absorbed by other issues, that, in January, 1913, the bill was withdrawn and the project dropped. During the next eighteen months a less ambitious measure, prohibiting plural voting at general parliamentary elections (although allowing it at by-elections), was twice passed by the lower, though twice rejected by the upper, chamber; and when the Great War came on, in August, 1914, this part of the Liberal program seemed about to be realized.[1] Under the stress of international complications, the bill was promptly abandoned.

The ultimate effect of the war was, none the less, to set forward the cause of electoral reform in wholly unexpected fashion; and on February 6, 1918, the law under which all parliamentary elections are now held was placed on the statute book. It was not by choice that the Government turned its attention to electoral questions while the nation was still fighting for its life within hearing of the Channel ports. Rather, it was compelled to do so by the sheer breakdown of the electoral system, caused by wholesale enlistments in the army and by the farther dislocation of population arising from the development of war industries. The situation was bad enough in county, municipal, and parish elections. But a parliamentary election under the new conditions would have been a farce. By successive special acts, and with general consent, the life of the parliament chosen in December, 1910, was prolonged, in order to defer, and per-

[1] Under the terms of the Parliament Act of 1911. See p. 155.

haps to avoid altogether, a war-time election. A general election, however, there must eventually be; and whether before or after the cessation of hostilities, it would demand, in all justice, a radically altered system of registration and voting, if not new franchises and other important changes. At the instigation of the cabinet, Parliament therefore took up the question in the summer of 1916, and the preliminary consideration of a new electoral law was intrusted to a special commission, chosen by the Speaker of the House of Commons and presided over by him, and made up with much care to represent in proper proportion, not only the parties and groups in Parliament, but the various bodies of public opinion on electoral questions throughout the United Kingdom.

This "Speaker's Conference," consisting of thirty-six members from both houses, began its work October 10, 1916.[1] Its report was presented to the House of Commons in the following March, and on May 5 a bill based upon its recommendations was introduced as a Government measure. Debate proceeded intermittently until December 7, when the bill, considerably enlarged, was passed and sent up to the House of Lords. Here, seventeen days were devoted to the project, and on January 30 the measure was returned to the House of Commons with eighty-seven pages of amendments. Pressure of time made for compromise, and on February 6 the houses came into agreement upon a completed bill, which forthwith received the king's assent.

The Representation of the People Act of 1918: the Suffrage. — This new Representation of the People Act was primarily a piece of suffrage legislation. Yet it was a great deal more than that. Upon the basis of a doubled electorate it erected an electoral system which was almost entirely new; and the measure itself is to be thought of as a general electoral law, more comprehensive, and even revolutionary, than any kindred act in English history. Effort to adapt electoral machinery to the conditions entailed by the war early convinced the Speaker's Conference that the old practice of defining franchises in terms of relationship to property would have to be discontinued, and that in lieu thereof it would be necessary to adopt the principle that the suffrage is a personal privilege, possessed by the individual simply as a citizen. The two houses accepted this view, and hence the act swept away the entire mass of existing intricate parliamentary franchises and extended the suffrage to all male

[1] J. King, "The Speaker's Conference on Electoral Reform," in *Contemp. Rev.*, Mar., 1917.

subjects of the British crown twenty-one years of age or over, and resident for six months in premises in a British or Irish constituency, without regard to value or kind.[1] It is no longer necessary that the voter be at his home on polling day in order to cast his ballot. He may arrange to receive and return the ballot-paper by post. Even under normal conditions, this liberates from practical disfranchisement many thousands of men — merchant seamen, commercial travelers, fishermen, and others — whose occupations keep them away from their homes. Under the war conditions existing when the act was passed the provision meant very much more than that. The main immediate purpose of the measure was, indeed, to bring back into the electorate the millions of men whose military and naval service temporarily disfranchised them under the old system. Full provision was accordingly made for the registration of soldiers and sailors in their home constituencies. If within reasonable distance, they may personally vote by post; if not, they may designate persons at home to act as their proxies and vote in their behalf. Furthermore, the voting age for men who rendered military or naval service in the Great War was fixed at nineteen, rather than twenty-one.

Contrary to expectation, plural voting survived. The Conservative elements insisted upon retaining it as a means of preventing the submerging of the more educated and more wealthy part of the electorate, and the Liberals pressed their point only to the extent of securing a limitation of the number of votes that any one elector may cast to two. Under two conditions one may have a second vote: (1) as an occupier for business purposes of premises worth £10 a year in a constituency other than that of one's residence, and (2) as the holder of a degree from any of the several universities named in the act. The number of university representatives was increased, and also of universities entitled to representation as such, and the university franchise — which had long been under fire, and which the unsuccessful electoral bill of 1912 proposed to abolish — was broadened by being extended to recipients of any degree, instead of merely holders of the older arts degrees.[2]

[1] Aliens, bankrupts, idiots, and peers are disqualified, but receipt of poor relief or other alms no longer counts as a disqualification. A trace of the property qualification survives in the provision that, as an alternative to six months' residence, a man may qualify as a voter in a district by showing that he has occupied business premises of an annual value of not less than ten pounds in the borough or county for six months ending on January 15 or July 15.

[2] University representation was provided for as follows: Oxford, 2; Cambridge, 2; London, 1; other English universities (Durham, Manchester, Liverpool, Leeds,

The outbreak of the war in 1914 seemed to end all hope of early legislation on woman suffrage. The effect was, however, quite the opposite. Within two years and a half the conflict brought the suffragists an advantage which no amount of agitation had ever won for them, *i.e.*, the formal backing of the government, and a few months more carried their cause to a victorious conclusion which might not have been reached in a full decade of peace. Now that men were to have the suffrage *as persons*, it was more than ever difficult to withhold it from women. Indeed, in the present juncture — in the face of woman's incalculable services to the nation during the war — to withhold it was quite impossible. Powerful opposition, of course, was raised. All of the old anti-suffrage arguments were heard again, and in addition it was contended, with more or less plausibility, that a woman's enfranchisement act ought not to be put on the statute book without a referendum, or by a parliament which had overrun its time by two full years, or while three million men, including more than one fifth of the members of the House of Commons, were absent in military service. The proposal to admit women to the suffrage only at the age of thirty was objected to as arbitrary and illogical, especially in view of the fact that more than three fourths of the women employed in the munition plants were under the age indicated. One debater remarked that it would be just as rational to give the franchise to women with red hair and make hair-dyeing a corrupt practice! The reason for this feature of the bill was simple enough, *i.e.*, to prevent female voters from heavily outnumbering the males.

Still other objections were raised: (1) that six million inexperienced woman voters ought not to be added to the electorate at precisely the time when the problems of war, peace, and reconstruction were to make the largest demands upon the electoral capacities of the nation; (2) that, in the words of Mrs. Humphrey Ward, the Act would "cripple disastrously the indispensable conservative forces of the country at a time when there is a most imperative need of a due balance between conservative and liberal principles and influences"; (3) that the wholesale enfranchisement of women was dictated largely by the Labor party, which expected to turn the new stream of electoral power to its own advantage; and (4) that while the present measure was so drawn as to keep male voters in the

Sheffield, Birmingham, and Bristol), 2; the Welsh University, 1; the Scottish universities (St. Andrews, Glasgow, Aberdeen, and Edinburgh), 3; Dublin, 2; National (Irish) University, 1; and Queen's (of Belfast), 1 — a total of 15.

majority, the age disparity between men and women would hardly outlast another parliament, and that when the inevitable equalization should take place woman voters would be in a majority by upwards of two millions.[1]

As finally passed, the act conferred the suffrage on every woman over thirty years of age who is herself, or whose husband is, entitled to be registered as a local government elector in respect of the occupation of a dwelling-house, without regard to value, or of land or premises (not being a dwelling-house) of a yearly value of not less than £5. At the age of thirty and upwards, a woman may vote also for a university member if she is a graduate of a university that confers degrees on women, or if she has fulfilled the conditions that would entitle a man to a degree.

The effect of the foregoing legislation was to double the British electorate at a stroke. The reform act of 1832 created half a million new electors, raising the proportion of electors to the total population to one in twenty-four; the act of 1867 created a million electors, raising the proportion to one in twelve; the act of 1884 added two million electors, making the proportion one in seven; the act of 1918 added eight millions, bringing the proportion up to the remarkable figure of one in three. Of the eight million new voters, one fourth were men, and three fourths, women.[2]

Representation of the People Act of 1918: Other Features. — Unlike the scores of electoral bills that had made their appearance in Parliament since 1885, the new act bracketed redistribution with franchise reform. Fixing as a standard one member for every 70,000 people in Great Britain, and one for every 43,000 in Ireland, it (together with the separate act passed for Ireland) bestowed representation on thirty-one new boroughs and took it away from forty-four, and in other ways so rearranged the constituencies as to bring up the whole number of members of the House of Commons — already the largest legislative assemblage in the world — from 670 to 707. England, with 492 seats, gained 31; Wales with 36, Scotland with 74, and Ireland with 105, gained 2 each.[3] The disproportionate repre-

[1] As a matter of fact, the National Union of Woman Suffrage Societies officially announced, as soon as the measure was on the statute book, that its next task was to force the lowering of the age limit for female voters.

[2] For the effects of the law upon the local electorate see p. 229.

[3] The distribution, in full, is as follows:

	Counties	*Boroughs*	*Universities*	*Total*
England and Wales	254	266	8	528
Scotland	38	33	3	74
Ireland	80	21	4	105
	372	320	15	707

sentation of Ireland remained, but it was understood to be subject to change when the Home Rule Act already on the statute book, or some substitute for it, should be put into effect.[1] The act failed to provide for any future redistributions of seats, periodic or otherwise.

The Speaker's Conference recommended a general plan of proportional representation, and the House of Lords, looking ahead to the time when the conservative elements are likely to be in a decided minority, held out resolutely for the principle. Five times the House of Commons rejected the proposal outright. But in the end the chamber was obliged, in order to save the bill, to accept an optional provision for the appointment of a commission to prepare a plan for the election of one hundred members by proportional representation in specially formed constituencies returning from three to seven members. To the date of writing (1920) no action in this direction has been taken, and it seems probable that this portion of the law will remain a dead letter. In university constituencies returning two or more members, however, the elections must be according to the principle of proportional representation, each elector having one transferable vote.[2]

Finally may be mentioned the fact that the act thoroughly revised the system of registration of voters. Except in Ireland, the register in each parliamentary borough and county is now made up twice a year (spring and autumn) instead of once; and responsibility for the work is placed upon the town clerks and clerks of the county councils. Formerly, registration was a difficult and costly process; but the simplification of the franchise has lightened the task, notwithstanding the doubling of

[1] See p. 295.

[2] The adoption of some device for the protection of minorities against the "tyranny of majorities" has occupied the attention of political thinkers in England, as elsewhere, for many generations. John Stuart Mill urged that the system of proportional representation devised by Thomas Hare be incorporated in the reform bill of 1867, but the suggestion aroused little interest. Mr. Leonard Courtney (later Lord Courtney of Penwith) advocated a similar step in 1884, with like results. A royal commission appointed in December, 1908, to study foreign electoral systems and to recommend modifications of the English system, thoroughly considered the proportional plan and reported, in 1910, unfavorably. (Cd. 5163.) The general question of proportional representation in relation to Great Britain is discussed in J. Humphries, *Proportional Representation* (London, 1911); J. F. Williams, *Proportional Representation and British Politics* (New York, 1914), revised and republished under the title, *The Reform of Political Representation* (London, 1918); and P. E. Flandin, *La question de la représentation proportionnelle en Angleterre et dans les colonies Anglaises. Le vote transférable* (Paris, 1914). Proportional representation was introduced in the municipal elections of Ireland in 1919.

the electorate. The cost is paid half out of local rates and half out of the national treasury.[1]

Parliamentary Elections. — Under our American system of government, elections fall at fixed intervals, regardless of the condition of public affairs or the state of public feeling. In England, local elections take place at stated periods, but national elections do not. The only positive requirement concerning the latter is that an election must be ordered when a parliament has attained the maximum lifetime allowed by law. Prior to 1694 there was no stipulation upon this subject, and the king could keep a parliament in existence as long as he liked. Charles II retained for seventeen years the parliament called at his accession. From 1694 to 1716, however, the maximum term of a parliament was three years; from 1716 to 1911 it was seven years; to-day it is five years.[2] In point of fact, parliaments never last through the maximum period, and an average interval of three or four years between elections has been the rule.[3] In most instances an election is precipitated more or less unexpectedly on an appeal to the country by a defeated ministry, and it often happens that an election turns almost entirely upon a single issue and practically assumes the character of a national referendum upon that subject. This was preëminently true of the election of December, 1910, at which the country was asked to sustain the Asquith government in its purpose to curb the independent authority of the House of Lords. In any event, the campaign by which the election is preceded is brief. Appeals to the voters are made principally through public speaking, the controversial and illustrated press, pamphlets and handbills, parades and mass meetings, and the generous use of placards, cartoons, and other devices designed to attract and focus attention. Plans are laid, arguments are formulated, and leadership in public appeal is assumed by the members of the cabinet,

[1] On the reform act of 1918, in general, see J. R. Seager, *Parliamentary Elections under the Reform Act of 1918* (London, 1918); S. Mayer, *Representation of the People Act and the Redistribution of Seats* (Ireland) *Act, 1918* (London, 1918); H. Fraser, *The Representation of the People Act* (London, 1918); A. O. Hobbs and F. J. Ogden, *Guide to the Representation of the People Act of 1918* (London, 1918); J. A. R. Marriott, "The New Electorate and the New Legislature," in *Fortn. Rev.*, Mar., 1918; W. H. Dickinson, "The Greatest Reform Act," in *Contemp. Rev.*, Mar., 1918; P. Hamelle, "Le vote féminin en Angleterre," in *Rev. Polit. et Parl.*, Apr., 1918; and L. V. Holt, "The Parliamentary Franchise," in *Jurid. Rev.*, Mar., 1919.

[2] The Representation of the People Act of 1867 made the duration of a parliament independent of a demise of the sovereign.

[3] An exception, of course, is the parliament elected in December, 1910, which on account of war conditions extended its life, by successive acts, three years beyond the maximum, or until November, 1918. See p. 325.

led by the premier, and, on the other side, by the men who are the recognized leaders of the parliamentary Opposition.[1]

When a parliament is dissolved, a royal proclamation is forthwith issued ordering the election of a new House of Commons, and with this as a warrant, the chancellors of Great Britain and Ireland issue writs of election, addressed to the "returning officers" of the counties and boroughs, *i.e.*, the sheriffs and the mayors.[2] Formerly, these returning officers exercised their discretion, within limits imposed by law, in fixing the "election" day, and also the "polling" day if one was necessary, in the several constituencies. The act of 1918, however, allows no such leeway. The eighth day after the proclamation goes forth is election day for all constituencies, and the polling takes place nine days thereafter. Save in one contingency, the only thing that really happens on election day is the nomination of candidates. So far as the law is concerned, in order to be nominated it is necessary merely to be "proposed," in writing, by a registered voter of the constituency and "assented to" by nine other voters. Actually, of course, candidates are usually selected, or at all events approved in advance, by the local, or even the national, committee of the party.[3] The contingency referred to arises when the number of nominees is no larger than that of places to be filled. In this case, the returning officer simply declares the candidate, or candidates, duly elected, and the voters are not brought to the polls at all. The number of such uncontested elections, especially in Ireland, is always large; the proportion sometimes reaches one fourth or even one third. If, however, there is a contest, the election is adjourned, in order that a "poll," or count of votes, may be held to decide between the rival candidates. Formerly, the polling — while completed within any one constituency in a single day — dragged out over a period of two weeks or more, making it easy for the plural voter to go from district to district and cast ballot after ballot. As has been stated, the law of 1918 requires the polling

[1] Lowell, *Government of England*, II, Chap. xxxiv; M. Ostrogorski, *Democracy and the Organization of Political Parties*, trans. by F. Clarke (London, 1902), I, 442-501; M. MacDonaugh, *Book of Parliament* (London, 1897), 1-23. Among numerous articles descriptive of English parliamentary elections mention may be made of H. W. Lucy, "The Methods of a British General Election," in *Forum*, Oct., 1900; S. Brooks, "English and American Elections," in *Fort. Rev.*, Feb., 1910; W. T. Stead, "The General Election in Great Britain," in *Amer. Rev. of Revs.*, Feb., 1910; and d'Haussonville, "Dix jours en Angleterre pendant les élections," in *Rev. des Deux Mondes*, Feb. 1, 1910.

[2] For the form of the writ see Anson, *Law and Custom of the Constitution*, I 57.

[3] See p. 267.

to take place in all constituencies on the same day, namely, the ninth after the day on which the nominations are made.

Down to 1872 votes were cast orally and publicly. For forty years, however, there had been agitation for secret ballot. The Chartists made the reform one of their "six points"; South Australia introduced the system in 1856, and other Australasian dependencies promptly followed.[1] In 1872 a Parliamentary and Municipal Elections Act, commonly known as the Ballot Act, introduced the Australian system in all parliamentary and municipal elections, except the elections of university members. Furthermore, it substituted written for oral nominations, defined and imposed penalties for various electoral offenses, and to some extent regulated campaign expenditures. When, therefore, the properly qualified and registered elector appears to-day at the voting-place of his precinct, he receives an official ballot-paper, duly stamped, and bearing the names of the candidates arranged in alphabetical order. He takes this paper to a screened compartment and places a cross mark opposite the name or names of those for whom he desires to vote. Folding the paper so as to conceal the marks he has placed on it, he deposits it in the ballot-box, which is locked and sealed and so constructed that papers cannot be withdrawn without unlocking it.

During the voting, candidates' agents are allowed to be present in the polling-station; but they, as well as the officials, are bound by oath not to divulge who have voted, and are forbidden to seek to induce any voter to tell how he intends to vote or has voted, to attempt to ascertain the number of a voter's ballot (by which it could be identified), or, indeed, to interfere with the voter in any way whatsoever. At the close of the poll the presiding officer has to account to the returning officer for all of the papers intrusted to him; and the candidates' agents are with the returning officer when he counts the used, unused, and spoiled papers and tabulates the vote. The writ which served as the returning officer's authority is indorsed with a certificate of the election and, together with all of the ballot-papers, is transmitted to the clerk of the crown in chancery. In the United States the House of Representatives is judge of

[1] On the continent the ballot was introduced in Piedmont in 1848 and extended throughout the kingdom of Italy in 1861, and it was provided for in the German electoral law of 1869. In the United States voting by ballot was common from the Revolutionary period, although the "Australian" system, effectually securing secrecy, did not prevail until late in the nineteenth century. The first complete law on the subject was enacted by Massachusetts in 1888.

the qualifications of its members, and this means that a disputed election is decided by the House itself. A similar practice formerly prevailed in England. But there it was found that politics played too large a part in the decisions, and in 1868 the trial of election petitions — which may be presented by a defeated candidate or by any voter — whether filed on the ground of a miscount or on a charge of corrupt and illegal practices, was handed over to a judicial body consisting of two judges of the King's Bench division of the High Court of Justice, selected by the other judges of that division.[1]

Regulation of Electoral Expenditures. — Time was, and within the memory of men still living, when an English parliamentary election was attended by corrupt practices so universal and so shameless as to appear almost more ludicrous than culpable. Voters as a matter of course accepted the bribes that were tendered them and ate and drank and smoked and rollicked at the candidate's expense throughout the electoral period and were considered men of conscience indeed if they did not end by going over to the opposition. The notorious Northampton election of 1768, in the course of which a body of voters numbering under a thousand were the recipients of hospitalities from the backers of three candidates which aggregated upwards of a million pounds, was, of course, exceptional; but the history of countless other cases differed from it only in the amounts laid out.[2] To-day an altogether different state of things obtains. From having been one of the most corrupt, Great Britain has become one of the most exemplary of nations in all that pertains to the proprieties of electoral procedure. The Ballot Act of 1872 contained provisions calculated to strengthen preëxisting corrupt practices acts, but the real turning point was the adoption of the comprehensive Corrupt and Illegal Practices Act of 1883. By this measure bribery (in seven enumerated forms) and treating were made punishable by imprisonment or fine and, under

[1] On electoral procedure see Lowell, *Government of England*, I, Chap. x; MacDonaugh, *Book of Parliament*, 24–50; H. J. Bushby, *Manual of the Practice of Elections for the United Kingdom* (4th ed., London, 1874); W. Woodings, *Conduct and Management of Parliamentary Elections* (4th ed., London, 1900); E. T. Powell, *Essentials of Self-Government, England and Wales* (London, 1909); P. J. Blair, *Handbook of Parliamentary Elections* (Edinburgh, 1909); and H. Fraser, *Law of Parliamentary Elections and Election Petitions* (2d ed., London, 1910). A volume filled with interesting information is J. Grego, *History of Parliamentary Elections and Electioneering from the Stuarts to Queen Victoria* (new ed., London, 1892). The monumental work on the subject is M. Powell [ed.], *Rogers on Elections*, 3 vols. (16th ed., London, 1897).

[2] For an interesting account of electioneering in earlier days see Seymour and Frary, *How the World Votes*, I, Chap. v.

varying conditions, political disqualification. The number and functions of the persons who may be employed by the candidate to assist in a campaign were prescribed, every candidate being required to have a single authorized agent charged with the disbursement of all moneys (save certain specified "personal" expenditures) in the candidate's behalf, and with the duty of submitting to the returning officer within thirty-five days after the election a sworn statement covering all receipts and expenditures.[1] And, finally, the act fixed, upon a sliding scale in proportion to the size of the constituencies, the maximum amounts which candidates might legitimately expend. In boroughs containing not more than 2000 registered voters the amount was put at £350, with an additional £30 for every thousand voters above the number mentioned. In rural constituencies, where outlays will normally be larger, the sum of £650 was allowed when the number of registered electors was under 2000, with £60 for each additional thousand. In addition, the candidate was allowed an outlay of £100 for expenses of a purely personal character.[2]

In later years it was felt that these amounts were too large, and the Representation of the People Act of 1918 set up a new and reduced scale. In county constituencies the maximum expenditure (aside from a small agent's fee) is 7*d*. (14 cents) per elector, and in borough constituencies 5*d*. (10 cents). On the other hand, it is to be noted that whereas formerly the outlays of the returning officers for ballot papers, polling-stations, printing,

[1] On the functions and influence of the agents see Lowell, *Government of England*, I, 481–484.

[2] On the adoption of the Corrupt and Illegal Practices Act of 1883 see May and Holland, *Constitutional History of England*, III, 31–33, and Seymour, *Electoral Reform in England and Wales*, Chaps. xiii-xiv. The actual operation of the system may be illustrated by a specific case. At the election of 1906 the maximum expenditure legally possible for Mr. Lloyd George in his sparsely populated Carnarvon constituency was £470. His authorized agent, after the election, reported an outlay of £50 on agents, £27 on clerks and messengers, £180 on printing, postage, etc., £30 on public meetings, £25 on committee rooms, and £40 on miscellaneous matters — a total of £361. The candidate's personal expenditure amounted to £92, so that the total outlay of £462 fell short by a scant £8 of the sum that might legally have been laid out. Divided among the 3221 votes that Mr. Lloyd George received, his outlay per vote was 2*s*. 10*d*. At the same election Mr. Asquith's expenditure was £727; Mr. Winston Churchill's, £844; Mr. John Morley's, £470; Mr. Keir Hardie's, £623; Mr. James Bryce's, £480. In non-contested constituencies expenditures are small. In 1906 Mr. Redmond's was reported to be £25 and Mr. William O'Brien's, £20. In 1900 a total of 1103 candidates for 670 seats expended £777,429 in getting 3,570,345 votes; in 1906, 1273 candidates for the same 670 seats expended £1,166,858 in getting 5,645,104 votes; in January, 1910, 1311 candidates laid out £1,296,382 in getting 6,607,394 votes. A well-informed article is E. Porritt, "Political Corruption in England," in *N. Amer. Rev.*, Nov. 16, 1906.

clerk hire, and the fees and traveling expenses of the returning officers themselves, had to be met by the candidates, these charges have now (by the act of 1918) been placed upon the state. A farther novel and interesting requirement of the new law, intended to prevent an undue multiplicity of candidates, is that every person offering himself for election to Parliament shall deposit £150, to be returned to him if he gets more than one eighth of the votes recorded in his district, but otherwise to be forfeited.[1] The range of expenditure still permitted by law is, of course, considerable, and the records of election cases brought into the courts demonstrate that in practice its limits are often exceeded. None the less, the effect of the legislation on the subject has unquestionably been to restrain the outpouring of money by candidates and their backers, and therefore to purify politics, and at the same time to enable men of moderate means to stand for election who otherwise would be at grave disadvantage as against wealthier and more lavish competitors.

[1] Since 1882 parliamentary candidates in Canada have been required to deposit with the returning officer the sum of £40, which is returned only in case the candidate is successful or obtains a number of votes at least equal to half the number polled by the candidate elected.

CHAPTER IX

PARLIAMENT: THE HOUSE OF LORDS

Composition: the Hereditary Peers. — The British House of Lords is the oldest second chamber among contemporary parliamentary bodies. It is, furthermore, among second chambers, the largest and the most purely hereditary. Its descent can be traced straight from the Great Council of the Norman-Angevin period, and in the opinion of some scholars, from the witenagemot of Anglo-Saxon times.[1] To the Council belonged originally the nobility and the clergy, both greater and lesser. Practically, the body was composed of the most influential churchmen and the more powerful tenants-in-chief of the crown. In the course of time the lesser clergy ceased to attend; and the lesser nobles eventually found it to their advantage to cast in their lot, not with the great barons and earls, but with the well-to-do, although non-noble, knights of the shire. From the elements that remained — the higher clergy and the greater nobles — arose the House of Lords. The lesser barons, the knights of the shire, and the burgesses, on the other hand, combined to form the House of Commons.

As constituted to-day, the House of Lords is a mixed body. It contains not fewer than six distinct groups of members, who sit by various rights and have somewhat different status and functions. The first group includes the princes of the royal blood who are of age. The number of these is variable, but never large. They take precedence over the peers; but they rarely appear in the chamber, and hence have no active part in its proceedings.[2]

[1] "The House of Lords not only springs out of, it actually is, the ancient Witenagemot. I can see no break between the two." Freeman, *Growth of the English Constitution*, 62. Freeman, it must be remembered, was prone to glorify Anglo-Saxon institutions and to underestimate the changes wrought by the Norman Conquest. For an able statement of the opposing view see Adams, *Origin of the English Constitution*, Chaps. i–iv. An authoritative essay on the origin of the House of Lords is J. H. Round, *Peerage and Pedigree* (London, 1910), I, 324–362.

[2] For an account of the induction of the Prince of Wales as a member of the House of Lords in 1918 see London *Times* (Weekly ed.), Feb. 22, 1918, p. 159.

The second group is the most important of all. It consists of the peers with hereditary seats, who fall naturally into three classes: (1) peers of England, created before the union with Scotland in 1707; (2) peers of Great Britain, created between the date mentioned and the union with Ireland in 1800; and (3) peers of the United Kingdom, created since that date.[1] Technically, peers are created by the sovereign; but in practice their creation is controlled by the cabinet (mainly by the premier); and the object may be either to honor men of distinction in law, letters, science, art, statecraft, or business, or to alter the political complexion of the upper chamber.[2] The power to create peerages is unlimited[3] and is frequently and freely exercised. With exceptions to be noted, peerages are hereditary, and the heir assumes his seat at the age of twenty-one.[4] Peers are of five ranks — dukes, marquises, earls, viscounts, and barons. The complicated rules governing the precedence of these classes are of large social, but of minor political, interest.

A peer who is a bankrupt, or is under sentence for felony, is debarred from sitting in the chamber. But a man who inherits a peerage cannot renounce either the title or the seat that goes with it. More than once this rule has been a source of personal embarrassment, as well as a matter of political importance; for under its operation able and ambitious commoners have been compelled to surrender a seat in the more important chamber and to take a wholly undesired place in the upper house. In 1895 Mr. William W. Palmer, later Lord Selborne, inheriting a peerage but wishing to remain for a time in the House of Commons, put the rule to a test by neglecting to apply for a

[1] There are also peers of Ireland and peers of Scotland. But, as will be explained presently, these groups sit in the House of Lords at Westminster only by representation.

[2] The first peerage bestowed purely in recognition of literary achievement was awarded Tennyson in 1884; the peerages conferred upon Macaulay and Bulwer Lytton arose partly from political considerations. The first professional artist to be honored with a peerage was Lord Leighton, in 1896. Lord Kelvin and Lord Lister are among well-known men of science who have been thus honored. Lord Goschen's viscountcy was conferred, with universal approval, as the fitting reward of a great business career. The earldom of General Roberts and the viscountcies of Generals Wolseley and Kitchener were bestowed in recognition of military distinction. With some aptness the House of Lords has been denominated "the Westminster Abbey of living celebrities."

[3] Except that, under existing law, the crown cannot (1) create a peer of Scotland, (2) create a peer of Ireland otherwise than as allowed by the Act of Union with Ireland, and (3) direct the devolution of a dignity otherwise than in accordance with limitations applying in the case of grants of real estate.

[4] Descent is by the rule of primogeniture, and the heir remains a commoner during his father's lifetime.

writ of summons as a peer. The decision of the Commons, however, was that he was obligated to accept membership in the upper chamber, and that the West Edinburgh seat which he had occupied in the lower house was automatically vacated. In 1919 Viscount Astor sought to rid himself of his newly acquired title with a view to continuing in the House of Commons, but could find no way to do it; a bill which would have made it possible was defeated in the lower house by a vote of 169 to 56. A general measure for the removal of sex disqualifications was amended in the House of Commons in 1919 to permit peeresses-in-their-own-right (of whom there were at that time twenty-five) to sit and vote in the House of Lords; but the proposal was rejected by the upper chamber.

Composition: Representative Peers, Law Lords, and Lords Spiritual. — A third group of members consists of the representative peers of Scotland. Under the Act of Union of 1707, when a new parliament is summoned the whole body of Scottish peers elects sixteen of their number to sit as their representatives at Westminster. By custom the election takes place at Holyrood Palace in the city of Edinburgh.[1] The act of 1707 made no provision for the creation of Scottish peers; and the result is that, through the extinction of noble families and the conferring of peerages of the United Kingdom upon Scottish peers, the total number of Scottish peerages has been reduced from 165 to 33.[2] The tenure of a Scottish representative peer at Westminster is for the duration of a single parliament.

A fourth group of members is the Irish representative peers. The Act of Union of 1800 provided that not all of the peers of Ireland should have seats in the House of Lords, but only twenty-eight of them, who should be elected for life by the general body of Irish peers. The number of Irish peerages was put in course of gradual reduction, and it is now under the prescribed maximum of one hundred.[3] Unlike the Scottish peers, Irish peers, if not elected to the House of Lords, may stand for election to the House of Commons, although they cannot represent Irish

[1] For the process of election see Anson, *Law and Custom of the Constitution* (4th ed.), I, 219–229.

[2] Lowell, *Government of England*, I, 395. The total number of Scots in possession of peerages of one sort or another was, in 1919, eighty-one.

[3] The crown was authorized to create only one Irish peerage for every three that became extinct. For thirty years preceding the conferring of an Irish peerage on Mr. Curzon before he went to India as viceroy in 1899 no new Irish peerages were established. The total number of Irishmen in possession of peerages of all kinds was, in 1919, one hundred and sixty-eight.

constituencies.[1] While members of the lower house, however, they cannot be elected to the upper one, nor can they participate in the choice of representative peers.

A fifth group of members is made up of the Lords of Appeal in Ordinary, who differ from other peers in that their seats are not hereditary. One of the functions of the House of Lords is to serve as a high court of appeal. It is, therefore, desirable that the body shall contain at least a few able jurists, and, further, that business of a judicial nature shall be transacted largely by this corps of experts. In 1876 an Appellate Jurisdiction Act was passed authorizing the appointment of two (subsequently increased to four, and still later to six) "law lords" with the title of baron; and by legislation of 1887 the tenure of these members, hitherto conditioned upon their continued exercise of judicial functions, was made perpetual for life.[2] At present these justices, sitting under the presidency of the Lord Chancellor, form, in reality, the supreme tribunal of the realm. Three constitute a quorum for the transaction of judicial business; and although other legal-minded members of the chamber may participate, and technically every member has a right to do so, in most instances this inner circle discharges the judicial function quite alone.[3]

Finally, there are the ecclesiastical members — not peers, but "lords spiritual." In the fifteenth century the lords spiritual outnumbered the lords temporal; but upon the dissolution of the monasteries in the reign of Henry VIII, resulting in the disappearance of the abbots, the spiritual contingent became a minority. At the present day the number of ecclesiastical members is restricted by statute to 26. Scotland, whose Established Church is the Presbyterian, has none. Between 1801 and 1869 Ireland had four, but since the disestablishment of the Church in that island in 1869 it has had none. In England five ecclesiastics are, by statute, entitled to seats, *i.e.*, the arch-

[1] Lord Palmerston, for example, was an Irish peer, but sat in the House of Commons.

[2] The "law lords" include also all hereditary peers who have held certain high judicial offices. There are usually a dozen or more of them, in addition to the lords of appeal.

[3] See p. 218. In 1856 the desire to strengthen the judicial element in the House of Lords precipitated a notable controversy over the power of the crown to create life peerages. On the advice of her ministers, Queen Victoria conferred upon a distinguished judge, Sir James Parke, a patent as Baron Wensleydale for life. There were some precedents, but none later than the reign of Henry VI; and the House of Lords, maintaining that the right had lapsed and that the peerage had become entirely hereditary, refused to admit Baron Wensleydale until his patent was so modified as to put his peerage on that basis.

bishops of Canterbury and York and the bishops of London, Durham, and Winchester. Among the remaining bishops, the law allows seats to twenty-one, in the order of seniority. There are always, therefore, some English bishops who are not members of the chamber.[1] All ecclesiastical members retain their seats during tenure of their sees, but do not, of course, transmit their rights to their heirs, nor, necessarily, save in the case of the five mentioned, to their successors in office. Bishops and archbishops are elected, nominally, by the dean and chapter of the diocese; but when a vacancy arises the sovereign transmits a *congé d'élire* containing the name of the person to be elected, so that, practically, appointment is made by the king, acting under the advice of the prime minister. Bishoprics are created by act of Parliament.[2]

The total membership of the upper chamber now fluctuates around 675.[3] Formerly it was decidedly smaller; indeed its most notable growth has taken place within the past hundred and fifty years. During the reign of Henry VII there were never more than eighty members, of whom the majority were ecclesiastics. At the death of William III the roll of the upper chamber bore 192 names. At the death of Queen Anne the number was 209; at that of George I it was 216; at that of George II, 229; at that of George III, 339; at that of George IV, 396; at that of William IV, 456. Between 1830 and 1898, 364 peerages were conferred — 222 under Liberal ministries (covering, in the aggregate, forty years) and 142 under Conservative governments (covering twenty-seven years). More than half of the peerages of to-day have been created within the past sixty

[1] The bishop of Sodor and Man is entitled to a seat, but not to take part in the chamber's proceedings. His status has been compared to that of a territorial delegate in the United States (Moran, *English Government*, 170). The act of 1914 which disestablished the Church in Wales and Monmouthshire provided for the withdrawal of the four bishops of that section from the House of Lords. Actual disestablishment was postponed until after the war, and in 1919 a supplementary Welsh Church Act was passed. The two measures took effect March 31, 1920, and on April 7 the bishop of St. Asaph was elected the first archbishop of the newly created province of Wales. The right of the four Welsh bishops to sit in the House of Lords thereupon ceased.

[2] On the composition of the House of Lords see Lowell, *Government of England*, I, Chap. xxi; Anson, *Law and Custom of the Constitution*, I, Chap. v; May and Holland, *Constitutional History of England*, I, Chap. v; Moran, *English Government*, Chap. x; Low, *Governance of England*, Chap. xii; Courtney, *Working Constitution of the United Kingdom*, Chap. xi; and Marriott, *English Political Institutions*, Chaps. vi–vii. The subject is treated in greater detail in Pike, *Constitutional History of the House of Lords*, especially Chap. xv.

[3] In 1919 there were 3 peers of the royal blood, 2 archbishops, 19 dukes, 29 marquises, 122 earls, 58 viscounts, 24 bishops, 371 barons, 16 Scottish representative peers, 28 Irish representative peers — a total of 672.

years, and of the remainder only an insignificant portion can be termed ancient.

The Breach between the Lords and the Nation. — For upwards of a century the "mending or ending" of the House of Lords has been one of the great issues of British politics. The question has been mainly one of mending; for — outside of the Labor party in recent years — few persons have seriously advocated the total abolition of the chamber, and their influence has been slight. The indictments that have been brought by the critics have been based upon the predominantly hereditary character of the membership, upon the meagerness of attendance at the sittings and the small interest displayed by a majority of the members, and upon the hurried and often perfunctory consideration given public measures. Fundamentally, however, the attack has had as its impetus the conviction of large numbers of people that the chamber as now constituted stands for interests that are not those of the nation at large.

Prior to the parliamentary reforms of the nineteenth century, the House of Commons was hardly more representative of the people than was the upper chamber. Both were controlled by the landed aristocracy, and between the two there was, as a rule, substantial accord. After 1832, however, the territorial interests, while still powerful, were not so dominant in the Commons, and a cleavage between the Lords, on the one hand, and the Commons, more nearly representative of the mass of the nation, on the other, became a serious factor in the politics and government of the realm. The reform measures of 1867 and 1884, embodying a substantial approach to manhood suffrage in parliamentary elections, converted the House of Commons into a true organ of democracy. The development of the cabinet system brought the working executive, likewise, entirely within the range of public control. But the House of Lords underwent no corresponding transformation. It remained, and still is, an inherently and necessarily conservative body, representative, in the main, of the interests of landed property, opposed to changes which seem to menace property and established order, and identified with all the forces that tend to perpetuate the nobility and the Anglican Church as pillars of the state. By simply standing still while the remaining branches of the government were undergoing democratization, the second chamber became, in effect, a political anomaly.[1]

[1] Dickinson, *Development of Parliament during the Nineteenth Century*, Chap. iii.

Reform Proposals to 1909. — Projects for the reform of the House of Lords were not unknown before 1832, but it has been since that date, and more particularly during the past half-century, that the question has been agitated most vigorously. Some of the plans relate to the composition of the chamber, others to its powers and functions, and still others to both of these things. As to composition, the suggestions brought forward most commonly look to a reduction of the aggregate membership, the dropping out of the ecclesiastical members, and the substitution, wholly or in part, of specially designated members for the members who at present sit by hereditary right. In 1869 a bill of Lord John Russell providing for the gradual infiltration of life peers was defeated, and in the same year a project of Earl Grey, and in 1874 proposals of Lord Rosebery and Lord Inchiquin, came to naught. The rejection by the Lords of measures supported by Gladstone's government in 1881–83 brought the chamber afresh into popular disfavor, and in 1888 the second Salisbury ministry introduced two reform bills, one providing for the gradual creation of fifty life peerages, to be conferred upon men of attainment in law, diplomacy, and administrative service, and the other (popularly known as the "Black Sheep Bill") providing for the discontinuance of writs of summons to undesirable members of the peerage. The measures, however, were withdrawn after their second reading, and an attempt in 1889 to revive the second of them failed.

Thenceforward, until 1906, the issue remained in the background. The last two decades of the nineteenth century form, none the less, a very important period in its history; for in these years a change took place in the position occupied by the upper chamber which lay at the root of the entire controversy of 1909 and the succeeding decade. This change related specifically to the balance of power between the two great parties in the chamber. Prior to 1886, both of the leading parties, Liberal and Conservative, were strongly represented in the chamber's membership. The Conservatives were more numerous, as a rule, but not greatly so. When a Conservative ministry was in office it naturally found no difficulty in obtaining for its measures the assent of the Lords; and when the Liberals were in power they could usually shape their program in such a way as to accomplish their major purposes.

In 1886 the Liberal party broke asunder on Gladstone's first Home Rule Bill. Under the leadership of Joseph Chamberlain, most of the party members who were of the "governing classes"

seceded; and after a period of independence, under the name of Liberal Unionists, they gravitated toward the Conservative party, gradually merged with it, and ended not only by imparting new life to it, but by giving it a new name, *i.e.*, Unionist. In this secession were involved most of the Liberal members of the upper chamber, the result being that the House of Lords became an almost purely Conservative body; and such it has remained to this day. In a total membership, in 1905, of over six hundred, there were only forty-five Liberals; in a total, in 1910, of six hundred and eighteen, there were seventy-five Liberals; and this in spite of the fact that between 1830 and 1910 more than two hundred and fifty Liberal peers were created. The irony of the Liberal position lay in the fact that, no matter how many peerages might be bestowed by Liberal governments upon men who were themselves Liberals, these men, or at all events their sons, were practically certain to yield to the subtle influences of the upper chamber and become Conservatives. Thus the process of recruiting the Liberal quota was continually frustrated, and the chamber remained a bulwark of Conservatism. This was the really critical aspect of the problem of the House of Lords as it presented itself after 1886. It was not so much the antiquated structure of the chamber, not so much its lack of touch with the people, not so much its disposition to resist change, that was the source of difficulty, but rather the fact that it was dominated absolutely and all of the time by one of the two great parties which must share the government of the nation. When the Conservatives, or Unionists, were in power — as they were during most of the period 1886–1906 — there was substantial harmony between the two houses of Parliament and, of course, between Parliament and the ministry. But when the Liberals were in power they had to reckon with an almost solidly hostile House of Lords and were fortunate if any considerable portion of their important measures successfully ran the gauntlet.

During the Liberal administration of 1892–95 the Lords rejected Gladstone's second Home Rule Bill and defeated or mutilated several other measures; but, although the Liberal leaders urged that the will of the people had been frustrated, the appeal for second chamber reform failed to strike fire. With the establishment of the Campbell-Bannerman ministry, in December, 1905, the Liberals entered upon what proved a prolonged tenure of power; and when, in 1906, the Unionist upper chamber began to show a disposition to block the Liberal pro-

gram relating to educational reform and a number of other important matters,[1] controversy between the two houses assumed a more serious character than at any earlier time. By an overwhelming vote the House of Commons adopted a resolution declaring that, in order to give effect to the will of the people as expressed by elected representatives, the lower chamber ought to be in a position to make any measure law within the life of a single parliament, notwithstanding adverse action taken by the Lords.[2] A bill looking to the reconstruction of the upper house was withdrawn; but the peers themselves were put on the defensive, and in 1908 a committee of their body, presided over by Lord Rosebery (a Liberal), reported a scheme of reform under which (1) possession of a peerage should not of itself entitle the holder to a seat in the chamber; (2) the whole body of hereditary peers, including those of Scotland and Ireland, should elect, for each parliament, two hundred of their number to sit in the upper house; (3) hereditary peers who had occupied certain posts of eminence in the government and the army and navy should be entitled to sit without election; (4) the bishops should elect eight representatives, while the archbishops should sit as of right; and (5) the crown should be empowered to summon four life peers annually, so long as the total should not exceed forty. This scheme failed to meet the Liberal demand, and no action was taken upon it. But it remained an important basis of discussion.[3]

The Lords and Money Bills. — In the autumn of 1909 the issue was reopened in an unexpected manner by the flat refusal of the upper house to pass the Government's Finance Bill (in

[1] Especially legislation abolishing the plural vote and regulating the liquor traffic. The Lords rejected a Plural Voting Bill and an Aliens Bill in 1906, a Land Values Bill in 1907, and a Licensing Bill in 1908. Fairness requires it to be said that during the first session of 1906 a total of 121 bills became law, that only four (including the Education Bill) passed by the Commons were rejected by the Lords, and that fifteen passed by the Lords were rejected by the Commons. The proportions at most sessions during the period under review were substantially similar. But, of course, measures rejected by the Lords were likely to be those in which the interest of the Liberal government was chiefly centered.

[2] The newly reorganized Labor party introduced a resolution at the same time to the effect that "the Upper House, being an irresponsible part of the legislature and of necessity representative only of interests opposed to the general well-being, is a hindrance to national progress and ought to be abolished." *Labor Year Book* (1916), p. 323. This proposal was renewed in 1910. An important state paper was published in 1907 entitled *Reports from his Majesty's Representatives Abroad Respecting the Composition and Functions of the Second or Upper Chamber in Foreign States* (Cd. 3428).

[3] May and Holland, *Constitutional History of England*, III, 343–349. For references on the general subject of the reform of the House of Lords see pp. 161–162.

which were incorporated momentous proposals of the Chancellor of the Exchequer, Mr. Lloyd George, concerning the readjustment of national taxation) until the controversial aspects of the budget should have been submitted to the people at a general election.[1] This act, while clearly within the bounds of formal legality, contravened the long accepted principle of the absolute and final authority of the popular branch in matters of finance, and most Liberals pronounced it revolutionary. As early as 1407 Henry IV accepted the principle that money grants should be initiated in the Commons, assented to by the Lords, and thereupon reported to the crown. This procedure was not always observed, but after the two houses resumed their normal functions following the Restoration in 1660 the right of the commoners to take precedence in fiscal business was forcefully and continuously asserted. In 1671 the Commons resolved "that in all aids given to the king by the Commons, the rate or tax ought not to be altered by the Lords," and a resolution of 1678 reaffirmed that all bills granting supplies "ought to begin with the Commons." At no time did the Lords formally subscribe to these principles; but, by refusing to consider fiscal measures originated in the upper chamber and to accept financial amendments there proposed, the Commons successfully enforced the observance of them.

The rules upon which the Commons insisted have been summarized as follows: "(1) the Lords ought not to initiate any legislative proposal embodied in a public bill and imposing a charge on the people, whether by taxes, rates, or otherwise, or regulating the administration or application of money raised by such a charge, and (2) the Lords ought not to amend any such legislative proposal by altering the amount of a charge, or its incidence, duration, mode of assessment, levy or collection, or the administration or application of money raised by such a charge."[2] These rules, although not embodied in any law or standing order, were for centuries so generally observed that they became, for all practical purposes, a part of the constitutional system — conventional, it is true, but none the less binding. From their observance it resulted (1) that the upper chamber was never consulted about the annual estimates, about the

[1] On the nature of the Government's finance proposals see May and Holland, *Constitutional History of England*, III, 350–355; G. L. Fox, "The British Budget of 1909," in *Yale Rev.*, Feb., 1910; D. Lloyd George, *The People's Budget* (London, 1909), containing extracts from the Chancellor's speeches on the subject; and B. Mallet, *British Budgets, 1887–88 to 1912–13* (New York, 1914).

[2] Ilbert, *Parliament*, 205.

amounts of money to be raised, or about the purposes to which these amounts should be appropriated; (2) that proposals of taxation came before it only in matured form and under circumstances which discouraged criticism; and (3) that, since the policy of the executive is controlled largely through the medium of the power of the purse, the upper house practically lost the means of exercising such control. In 1860 the Lords, as has been mentioned, made bold to reject a bill for the repeal of the duties on paper; but the Commons vigorously reaffirmed its preëminence in finance, and the next year the repeal of the paper duties was incorporated in the annual budget and forced through. Thereafter it became the practice to include all proposals of taxation in one or the other of the two great revenue bills passed each year, with the effect, of course, of depriving the Lords of the opportunity to defeat a proposal of the kind save by rejecting the whole of the measure of which it formed a part.[1]

The Finance Bill of 1909 and the Asquith Resolutions. — The rejection of the Finance Bill in 1909, following as it did the defeat of other important measures which the Liberal majority in the Commons had approved, raised in an acute form the question of the actual power of the upper chamber over money bills and precipitated a crisis in the relations of the two houses. On the one hand, the House of Commons adopted, by a vote of 349 to 134, a resolution to the effect that "the action of the House of Lords in refusing to pass into law the provision made by the House of Commons for the finances of the year is a breach of the constitution, and a usurpation of the privileges of the House of Commons"; and, on the other, the Asquith ministry came instantly to the decision that the situation demanded an appeal to the country. In January, 1910, a general election took place, with the result that the Government was continued in power, although with a reduced majority; and at the convening of the new parliament, in February, the Speech from the Throne promised that proposals would speedily be submitted "to define the relations between the houses of Parliament, so as to secure the undivided authority of the House of Commons over finance, and its predominance in legislation." The Finance Bill of the year was reintroduced and this time successfully carried through;[2]

[1] See p. 191.

[2] The Finance Bill passed its third reading in the House of Commons April 27, was passed in the House of Lords April 28, without division, and received the royal assent April 29.

but in advance of its reappearance the premier laid before the House of Commons a series of resolutions to the following effect: (1) that the House of Lords should be disabled by law from rejecting or amending a money bill; (2) that the power of the chamber to veto other bills should be restricted by law; and (3) that the duration of a parliament should be limited to a maximum period of five years. During the debate on these resolutions it was made clear that the Government did not desire the abolition of the House of Lords, but wished merely to have the chamber's legislative power legally restricted to consultation, revision, and, subject to proper safeguards, delay. The resolutions were adopted by substantial majorities,[1] and a Government bill drawn on these lines was forthwith introduced.

Meanwhile, Lord Rosebery offered in the House of Lords a series of resolutions, as follows: (1) that a strong and efficient second chamber is not merely a part of the British constitution but is necessary to the well-being of the state and the balance of Parliament; (2) that such a chamber may best be obtained by the reform and reconstitution of the House of Lords; and (3) that a necessary preliminary to such a reform and reconstitution is the acceptance of the principle that the possession of a peerage shall no longer of itself confer the right to sit and vote in the House. The first two of these resolutions were agreed to without division; the third, although vigorously opposed, was carried by a vote of 175 to 17.

The Unionists and the Referendum. — The death of the king, Edward VII, halted consideration of the subject, and through the summer of 1910 hope centered in a "constitutional conference" participated in by eight representatives of the two houses and of the two principal parties. Twenty-one meetings, in all, were held, but effort to reach an agreement was futile, and at the reassembling of Parliament, November 15, the problem was thrown back for solution upon the houses and the country. The Government's Parliament Bill having been presented in the second chamber (November 21), Lord Lansdowne, leader of the Opposition, came forward with a fresh series of resolutions designed to clarify the Unionist position in anticipation of the elections which were announced for the ensuing month. They declared that the House of Lords was "prepared to forego its constitutional right to reject or amend money bills which are purely financial in character," provided (1) that adequate provision was

[1] The votes on the three resolutions were, respectively, 339 to 237, 351 to 246, and 334 to 236.

made against tacking, (2) that questions as to whether a bill or any provision thereof was "purely financial" should be referred to a joint committee of the two houses (the Speaker of the Commons presiding and having a casting vote), and (3) that a bill decided by such a committee to be not purely financial should be dealt with in a joint sitting of the two houses. As to all measures other than those thus provided for, the resolutions declared that "if a difference arises between the two houses with regard to any bill other than a money bill in two successive sessions, and with an interval of not less than one year, and such difference cannot be adjusted by any other means, it shall be settled in a joint sitting composed of members of the two houses; provided that if the difference relates to a matter which is of great gravity, and has not been adequately submitted for the judgment of the people, it shall not be referred to the joint sitting, but shall be submitted for decision to the electors by referendum."

These resolutions were hardly less drastic than the terms of the Government's bill. They looked to the total abolition of the absolute veto of the second chamber, and they might well involve the intrusting of interests which the peers held dear to the hazards of a nation-wide referendum.[1] None the less, they were agreed to without division; and, both parties having in effect pronounced existing arrangements unsatisfactory, the electorate was asked to choose between the two substitutes thus proposed.

Enactment of the Parliament Bill (1911). — The appeal to the country, in December, yielded results almost identical with those of the election of the previous January. The Government secured a majority of 127, and in the new House of Commons, which met on February 6, the Parliament Bill was reintroduced without alteration. On the ground that the measure had been submitted to the people as a clear issue, and had been approved, the ministry asked its prompt enactment by the two houses. On May 15 the bill passed its third reading in the Commons by a vote of 362 to 241. During the committee stage upwards of a thousand amendments were suggested. But the Government stood firm for the instrument as originally drawn, and while a few minor changes were made, the measure went through untouched in its essentials.

Meanwhile Lord Lansdowne introduced in the upper chamber

[1] On the growth of the idea of the referendum see H. W. Horwill, "The Referendum in Great Britain," in *Polit. Sci. Quar.*, Sept., 1911.

a comprehensive bill embodying the program of reconstruction to which the more moderate elements in that chamber were ready, under the circumstances, to subscribe. The Lansdowne Reconstruction Bill proposed, at the outset, a reduction of the membership of the chamber to 350. Princes of the blood and the two archbishops should retain membership, but the number of bishops entitled to sit should be reduced to five, to be chosen triennially by the whole body of higher prelates upon the principle of proportional representation. The remainder of the membership should consist of "lords of Parliament," as follows: (1) 100 elected from the peers possessing carefully stipulated qualifications, for a term of twelve years, on the principle of proportional representation, by the whole body of hereditary peers (including the Scottish and Irish), one fourth of the number retiring triennially; (2) 120 members chosen by electoral colleges composed of members of the House of Commons divided for the purpose into regional groups, each returning from three to twelve, under conditions of tenure similar to those prevailing in the first class; and (3) 100 appointed, from the peerage or outside, by the crown on nomination by the premier, with regard to the strength of parties in the House of Commons, and under the before-mentioned conditions of tenure. It was stipulated, farther, that peers not sitting in the House of Lords should be eligible for election to the House of Commons, and that, except in event of the "indispensable" elevation of a cabinet minister or ex-minister to the peerage, it should be unlawful for the crown to confer an hereditary peerage upon more than five persons during the course of any single year.

These proposals, it will be observed, related exclusively to the *composition* of the upper chamber. The Liberal leaders preferred to approach the problem from the other side and to establish the preponderance of the Commons by restrictions upon *powers*. Lord Lansdowne's bill — sadly characterized by its author as the "deathblow to the House of Lords, as many of us have known it for so long" — came too late, and the chamber, after allowing it to be read a second time without division, was obliged to drop it for the Government's measure. On July 20 the Parliament Bill, amended to exclude from its operation legislation affecting the constitution and other matters of "great gravity," was adopted without division. The amendment was objectionable to the Liberals, who, relying upon an understanding entered into with the king during the previous November relative to the creation of peers favorable to the Government's program,

let it be understood that no compromise upon essentials could be considered.[1] Confronted with the prospect of a wholesale "swamping," [2] the Opposition fell back upon the policy of abstention; and, although a considerable number of "last-ditchers" held out to the end, a group of Unionists sufficient to carry the measure joined the supporters of the Government, August 10, in a vote not to insist upon the Lords' amendments — which meant, in effect, to approve the bill as adopted in the lower house.[3] The royal assent was given on August 18.

Provisions of the Parliament Act. — In its preamble the Parliament Act promised farther legislation to define both the composition and the powers of a second chamber "constituted on a popular instead of an hereditary basis"; but the act itself dealt exclusively with the powers of the chamber as at present constituted. The general purport of the measure is to define the conditions under which, while the normal methods of legislation remain unchanged, financial bills and projects of general legislation may, nevertheless, be enacted into law without the concurrence of the upper house. The first signal provision is that a public bill passed by the House of Commons and certified by the Speaker to be, within the terms of the act, a "money bill" shall, unless the Commons direct to the contrary, become an act of Parliament on the royal assent being signified, notwithstanding that the House of Lords may not have consented to the bill, within one month after it shall have been sent up to that house. A money bill is defined as "a public bill which, in the judgment of the Speaker, contains only provisions dealing with all or any of the following subjects: the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, or on money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the payment thereof; or subordinate matters incidental to those subjects or any of them." A certificate of the Speaker on this subject is

[1] When, on July 24, Mr. Asquith rose in the Commons to reply to the Lords' amendments such confusion ensued that for the first time in generations, save upon one occasion in 1905, the Speaker was obliged to adjourn a sitting on account of the disorderly conduct of members.

[2] Had the Unionists held out to the end as a body it might have been necessary to create some four hundred new peers in order to secure the passage of the bill.

[3] The final vote in the Lords was 131 to 114. The Unionist peers who voted with the Government numbered 37. F. Dilnot, *The Old Order Changeth* (London, 1911), Chap. xxi.

conclusive for all purposes; it cannot be questioned in a court of law.[1]

The second important stipulation is that any other public bill (except a bill to confirm a provisional order or to extend the maximum duration of Parliament beyond five years) which is passed by the House of Commons in three successive sessions, whether or not of the same parliament, and which, having been sent up to the House of Lords at least one month, in each case, before the close of the session, is rejected by that chamber in each of those sessions, shall, unless the House of Commons direct to the contrary, become an act of Parliament on the royal assent being signified thereto, notwithstanding the fact that the House of Lords has not consented to the bill. It is required that at least two years shall have elapsed between the date of the second reading of such a bill (*i.e.*, the first real opportunity for its discussion) in the first of these sessions of the House of Commons and the final passage of the bill in the third of the sessions. To come within the provisions of the act the measure must be, at its initial and its final appearances, the "same bill"; that is, it must contain no alterations save such as are made necessary by the lapse of time. A bill is to be construed as "rejected" by the Lords if it is not passed, or if amendments are introduced to which the House of Commons does not agree, or which the House of Commons does not itself suggest to the House of Lords at the second or third passage of the bill. Finally, the act sought to increase the frequency of national elections by reducing the maximum life of a parliament from seven to five years.[2]

Effects of the Act. — The general effect of the measure was to terminate the coördinate and independent authority which, in law if not in fact, the British upper chamber has enjoyed through the centuries. Within the domain of legislation, it is true, the Lords may yet exercise much influence. Every project of finance and of legislation which it is proposed to enact into law must be submitted to the chamber, and there is still nothing save custom to prevent the introduction of even the most important of non-financial measures first of all in that house. But a single pres-

[1] An incidental effect of the act is to exalt the power and importance of the Speaker, although it should be observed that the Speaker had long been accustomed to state at the introduction of a public bill whether in his judgment the rights or privileges claimed by the House of Commons in respect to finance had been infringed. If he were of the opinion that there had been infringement, it remained for the House to determine whether it would insist upon or waive its privilege. Ilbert, *Parliament*, 207.

[2] On this feature of the act see J. G. Randall, "Frequency and Duration of Parliaments," in *Amer. Polit. Sci. Rev.*, Nov., 1916, especially pp. 674–679.

entation of any money bill fulfills the legal requirement and insures that the measure will become law. For such a bill will not be presented until it has been passed by the Commons, and, emanating from the cabinet, it will not be introduced in that chamber until the assent of the crown is assured. The upper house is allowed one month in which to approve or to reject, but, so far as the future of the bill is concerned, the result is the same in any case. Upon ordinary legislation the House of Lords still has a veto — a veto, however, which is no longer absolute, but only suspensive. The conditions required for the enactment of non-fiscal legislation without the concurrence of the Lords are not easy to bring about, but their realization is not at all an impossibility.[1] A Welsh Disestablishment Bill became law in this manner, in 1914; and several other measures — including a Plural Voting Bill[2] — were in a fair way to do so when the Great War caused a cessation of ordinary legislative activity. By the repeated rejection of proposed measures the Lords may influence public sentiment or otherwise bring about a change of circumstances, and thus compass the defeat of the original intent of the Commons; and this is the more possible since a minimum period of two years is required to elapse before a non-fiscal measure can be carried over the Lords' veto. But the continuity of political alignments and of legislative policy is normally such that the remarkable predominance which has been given the popular branch must mean, in effect, little less than absolute law-making authority.[3]

The Question of Farther Reforms: the "Bryce Report." — As has been stated, the Parliament Act promised additional legislation which should define both the composition and the powers of a second chamber constituted on a popular, instead of an hereditary, basis. During the three years that elapsed before the outbreak of the Great War the Liberal Government was so preoccupied with the Irish question and other urgent issues that it did not get round to the resumption of its program of upper chamber reform. The war period was itself, of course, not a time in which this subject could be pressed. Hence, no farther changes have been made. Discussion of the subject, however, has gone steadily forward, and various more or less ingenious solutions have been offered. The most notable con-

[1] See p. 155.
[2] See p. 128.
[3] E. Jenks, "The Parliament Act and the British Constitution," in *Col. Law Rev.*, Mar., 1913.

tribution to the discussion since the legislation of 1911 is the report of a government committee known officially as the Conference on the Reform of the Second Chamber, of which Lord Bryce was chairman. This committee was appointed in August, 1917, at a time when the immediate democratization of the House of Commons had been determined upon, and when it was felt that if England was to make her political institutions square with her professions in a war of democracy against autocracy she must proceed also to the popularization of the upper chamber. The committee made a careful survey of the subject, and, in April, 1918, submitted its conclusions, in the form of a letter from the chairman to the prime minister.[1]

The report began by emphasizing the difficulties of the problem, especially of adapting an ancient institution to new ideas and new needs, of finding a basis for a second chamber that would be different in composition and type from the popular assembly, and of adjusting the powers and functions of the two parliamentary bodies. As to functions, the committee was agreed that the second chamber ought not to have equal powers with the House of Commons, nor aim at becoming a rival of that body, and that, in particular, it ought not to have the power of making and overturning ministries or to enjoy equal rights in dealing with finance. As to composition, there was similar agreement (1) that all possible precautions ought to be taken to secure that in a reformed second chamber no one set of political opinions should be likely to have "a marked and permanent predominance" (such as the Unionist doctrines have long enjoyed in the present chamber); (2) that the body should be so made up that it would aim at ascertaining the mind and views of the nation as a whole and should recognize its responsibility to the people as a whole; and (3) that certain elements ought especially to have a place in it, *i.e.*, persons of experience in various forms of public work, persons who, while likely to serve efficiently, have not the physical vigor requisite for a career in the House of Commons, and persons who are not strong partisans.

Various modes of making up a second chamber which would meet these requirements were duly considered. Popular election on the basis of a property qualification was rejected as too drastic and "not suitable to modern conditions." Selection of some or all of the members so as to represent different interests and professions, on the analogy of the Italian Senate, was held to be impracticable because of the difficulty of allotting repre-

[1] *Report of the Conference on the Reform of the Second Chamber.* Cd. 9038. 1918.

sentatives to the various groups.[1] Nomination by the sovereign, acting through the ministers, was discarded because the power would be likely to be used for party ends. Selection by a joint standing committee of the two houses found favor, yet was thought by the majority to be not a sufficiently broad basis of choice. Election by the House of Commons, which would be tantamount to indirect popular election, was enthusiastically supported, yet was felt to have some disadvantages.

The plan that was recommended combined features of the last two schemes. In the first place, the total membership of the chamber should be reduced by almost half, being fixed at 327. In the second place, these members should be thrown into two classes: (1) 246, to be elected by the members of the House of Commons grouped in thirteen regional divisions, the commoners from each division electing the quota in the upper chamber to which their area was entitled, and (2) 81, to be chosen from the whole body of peers by a joint committee of the two houses. All members should be elected for twelve-year terms, and one third of their number should retire quadrennially. Finally, not more than one third of the major portion of the chamber (*i.e.*, the 246) should be elected by any single House of Commons; hence, special arrangements should be made to put the system into operation by degrees.

Desirable Features of a Reform. — It is safe to assume that the question of second-chamber reform will soon come again into the field of practical politics. Even the Unionists, who with few exceptions opposed the Parliament Act, may be regarded as committed to the general idea; the real issue will be the method. Some men in all parties are of the opinion that, as John Bright once declared, "a hereditary House of Lords is not and cannot be perpetual in a free country." None the less, it is recognized that the chamber as at present constituted contains a large number of conscientious, eminent, and able men; that upon many occasions it has imposed a wholesome check upon the popular branch; that it already possesses some representative character; and that sometimes it has interpreted the will of the nation more correctly than has the popular branch itself. The most reasonable program of reform would seem to be, not a total

[1] It may be noted that during the discussions of 1910 Lord Wemyss proposed that the representative character of the chamber be given emphasis by the admission of three members designated by each of some twenty-one commercial, professional, and educational societies of the kingdom, such as the Royal Academy of Arts, the Society of Engineers, the Shipping Federation, and the Royal Institute of British Architects.

reconstitution of the upper chamber upon a "popular" basis, but (1) the adoption of the Rosebery principle that the possession of a peerage shall not of itself entitle the possessor to sit, (2) the admission to membership of a considerable number of persons representative of, and selected by, the whole body of hereditary peers, and (3) the introduction of a substantial quota of life or fixed-term members, appointed or elected for their legal attainments, political experience, and other qualities of fitness and eminence. A body so constituted would still incline strongly to conservatism; probably a Liberal ministry would still have to face in it a Unionist majority. But opposition would be less unyielding and less irresponsible than hitherto; and one may believe that, coupled with the changes wrought in powers by the Parliament Act, such an alteration would meet all reasonable demands.

The chief difficulty of the plan would be to determine the basis on which the life or fixed-term members should be chosen. In a country organized, as is the United States, on a federal basis, it is easy to make up a second chamber that will not be a duplicate of the first; the people in small groups can be represented directly in the lower house and the federated states, as such, in the upper. England is not a federal state, and no logical areas for upper chamber representation exist. But, as was the opinion of the Bryce commission, it is not inconceivable that they might be created — if, indeed, the old historic counties, or combinations of them, could not be made to serve. Great advantages would arise from a system under which a considerable number of members should be chosen to represent important special groups or interests, including the great professions. The universities, the learned societies, the principal Nonconformist bodies, the chambers of commerce, the manufacturers' associations, the bankers, the medical profession, and even the trade unions, come readily to mind in this connection.[1]

Prospective Relations of the Two Houses. — A body made up on the lines thus indicated would undoubtedly be respectable, capable, and vigorous; and this raises a new question, of which the reformers have not been unmindful. Would not such an upper chamber justly claim equality of rights and powers with the popular house? Could it be kept on the sub-

[1] For interesting discussions of this principle see L. Bouvier, *La représentation des intérêts professionnels dans les assemblées politiques* (Paris, 1914), and G. Carrière, *La représentation des intérêts et l'importance des éléments professionnels dans l'évolution et le gouvernement des peuples* (Paris, 1917).

ordinate plane to which recent legislation has lowered the House of Lords? In other words, would not the application of the representative principle to the chamber lead to an undesired revival of the authority of that body at the expense of the House of Commons? Some years ago Mr. Balfour, in a notable address, warned the lower chamber that this was what would happen; and other voices have been raised, in both of the great parties, to the same effect.

The apprehension seems, however, groundless. In the first place, no legal alteration of the composition or status of the second chamber can take place save by an act of Parliament; and it is inconceivable that the House of Commons would ever approve a measure which restricted its ultimate control in, at all events, the two great fields of finance and administration. In the second place, experience shows that in the long run an upper chamber, no matter what its basis, cannot maintain a parity of power and influence with the lower chamber under a system of responsible, *i.e.*, cabinet, government. The constitution of France seeks to make the cabinet responsible to both the Senate and the Chamber of Deputies, and the Senate is an exceptionally capable and energetic body.[1] Yet the Chamber of Deputies enjoys a substantial priority in the actual control of national affairs. The framers of the Australian constitution deliberately provided for a popularly elected upper house, with a view to making it an effective counterpoise to the federal House of Representatives. But the idea failed. To-day a Commonwealth Government recognizes the supremacy of the lower chamber only, and the Senate is a mere debating society.[2] In Canada the Senate, likewise, is conspicuously weak.[3] The outcome could hardly be otherwise in England. It will not do to say with a recent writer that the cabinet system "is fatal to a bicameral legislature." As is proved by France, there is a legitimate and useful place for a second chamber in a cabinet system of government; and most of the arguments that support a bicameral legislature in the United States are equally applicable in England. But it cannot be denied that, as the above-mentioned writer goes on to say, "whatever the mode of selection or however able its personnel, the upper chamber will continue to play but a subordinate position in political life so long as the principle of the

[1] See p. 411.

[2] A. B. Keith, *Responsible Government in the Dominions* (Oxford, 1912), II, 633–638.

[3] E. Porritt, *Evolution of the Dominion of Canada* (Yonkers, 1918), Chap. xi.

responsibility of the ministry to the House of Commons endures." [1] As an English authority has said, "a House of Commons, with the majority of the electorate behind it, could not be bitted and bridled by the Peers. . . . The Lords cannot prevent reform, or even revolution, if the electorate is in earnest and has a ministry to its mind." [2]

A subordinate position may, however, be a useful position; and it stands to reason that if a second chamber is to be retained at all, it ought to be made up in such a manner as to give it the greatest possible amount of industriousness and intelligence. The uses of a second chamber are to compel delay and deliberation; to make it impossible for a legislature to be swept off its feet by a sudden wave of unreasoning popular opinion; "to serve as an organ of revision, a check upon democracy, an instrument by which conservatism in action may be had, and a means for securing a representation of interests that is not feasible in a single chamber composed of members elected directly by the people." [3] The object, however, is not mere obstruction, such as may arise from inertia, incapacity, or partisanship. It is, instead, serious-minded criticism, deliberation, and revision, with a view to the general welfare rather than mere political exigencies. Properly performed, the function is no less honorable, and hardly less important, than that of initiation, or that of final decision, as performed by the lower chamber. The House of Lords has served the British nation well in the past; if it is wisely reconstructed, its usefulness will increase rather than diminish in the future.[4]

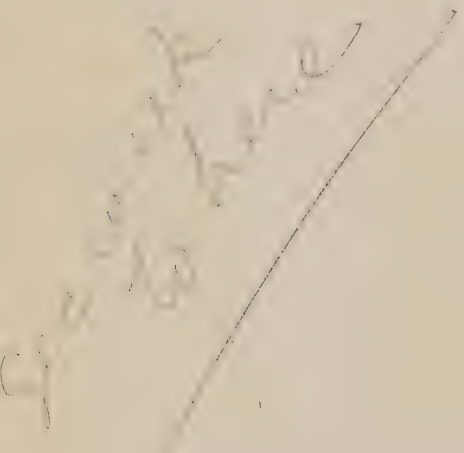
[1] C. D. Allin, "The Position of Parliament," in *Amer. Polit. Sci. Rev.*, June, 1914.

[2] Low, *Governance of England* (rev. ed.), 223.

[3] Willoughby, *Government of Modern States*, 318. Classic discussions of the uses of a second chamber include J. S. Mill, *Representative Government* (London, 1862), Chap. xiii, entitled "Of a Second Chamber," and John Adams, *Defence of the Constitutions of Government of the United States of America* (Boston, 1787). The latter work will be found in C. F. Adams [ed.], *Works of John Adams* (Boston, 1851), IV, 270–588. The relative advantages of the unicameral and bicameral systems are clearly set forth in Garner, *Introduction to Political Science*, 427–440.

[4] The literature of the subject of second chamber reform in England is voluminous and only a few of the more important titles can be mentioned here. The subject is discussed briefly in Lowell, *Government of England*, I, Chap. xxii; Moran, *English Government*, Chap. xi; Low, *Governance of England*, Chap. xiii; and H. W. V. Temperley, *Senates and Upper Chambers* (London, 1910), Chap. v. Important books include W. C. Macpherson, *The Baronage and the Senate; or the House of Lords in the Past, the Present, and the Future* (London, 1893); T. A. Spalding, *The House of Lords: a Retrospect and a Forecast* (London, 1894); J. W. Wylie, *The House of Lords* (London, 1908); W. S. McKechnie, *The Reform of the House of Lords* (Glasgow, 1909); W. L. Wilson, *The Case for the House of Lords* (London, 1910); and J. H. Morgan, *The House of Lords and the Constitution* (London, 1910). Of these, the first is one of the most forceful defenses and the second

one of the most incisive criticisms of the upper chamber that have been written. A brief review by an able French writer is A. Esmein, *La Chambre des Lords et la démocratie* (Paris, 1910). Among articles in periodicals may be mentioned H. W. Horwill, "The Problem of the House of Lords," in *Polit. Sci. Quar.*, Mar., 1908; E. Porritt, "The Collapse of the Movement against the Lords," in *N. Amer. Rev.*, June, 1908; *ibid.*, "Recent and Pending Constitutional Changes in England," in *Amer. Polit. Sci. Rev.*, May, 1910; J. L. Garvin, "The British Elections and their Meaning," in *Fortnightly Rev.*, Feb., 1910; J. A. R. Marriott, "The Constitutional Crisis," in *Nineteenth Cent.*, Jan., 1910; J. B. Firth, "A Real Second Chamber," in *Fortnightly Rev.*, Nov., 1917; and A. Williams, "The Requisite Second Chamber," in *Contemp. Rev.*, Nov., 1917. A readable sketch is A. L. P. Dennis, "Impressions of British Party Politics, 1909–1911," in *Amer. Polit. Sci. Rev.*, Nov., 1911; and the best accounts of the Parliament Act and of its history are: Dennis, "The Parliament Act of 1911," *ibid.*, May and Aug., 1912; May and Holland, *Constitutional History of England*, III, 343–384; Lowell, *Government of England* (rev. ed., New York, 1912), I, Chap. xxiiia; *Annual Register* for the years 1910 and 1911; M. Sibert, "Le vote du Parliament Act," in *Rev. du Droit Public*, Jan.–Mar., 1912, and "La réforme de la Chambre des Lords," *ibid.*, July–Sept., 1912. A book of some value is C. T. King, *The Asquith Parliament, 1906–1909; a Popular Sketch of its Men and its Measures* (London, 1910).



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CHAPTER X

PARLIAMENTARY ORGANIZATION

Sessions: the Opening of a Parliament. — It is required by law (a succession of "triennial acts," beginning in 1641) that Parliament shall be convened at least once every three years; on account of the pressure of business and, in particular, because of the custom which forbids granting control of the army and voting supplies for a period longer than one year, meetings are, in point of fact, annual.[1] A session ordinarily begins near the first of February and continues, with brief adjournments at holiday seasons, until August or September. The two houses must invariably be summoned together. Either may adjourn without the other; but the king can force an adjournment of neither. A prorogation, which brings a session to a close, and a dissolution, which brings a parliament to an end, must be ordered for the two houses concurrently. Both take place technically at the command of the king, actually upon the decision of the cabinet. A prorogation is to a somewhat indefinite date, which is determined later by the proclamation of a new session; and, like a dissolution, but unlike an adjournment, it terminates all pending business.

At the beginning of a session the members of the two houses gather, first of all, in their respective chambers. The commoners are thereupon summoned to the chamber of the Lords, where the letters patent authorizing the session are read and the Lord Chancellor makes known the desire of the crown that the Commons proceed to choose a Speaker. The commoners withdraw to attend to this matter, and on the next day the newly elected official, accompanied by the members, presents himself at the bar of the House of Lords, announces his election, and, through the Lord Chancellor, receives the royal approbation. Having demanded and received a guarantee of the "ancient and undoubted rights and privileges of the Commons," the Speaker and the members then retire to their own quarters, where the

[1] See, in this connection, J. G. Randall, "The Frequency and Duration of Parliaments," in *Amer. Polit. Sci. Rev.*, Nov., 1916.

necessary oaths are administered. If, as is not unusual, the king meets Parliament in person, he goes in state, probably the next day, to the House of Lords and takes his seat upon the throne, and the Lord Chamberlain is instructed to desire the Gentleman Usher of the Black Rod to *command* the attendance once more of the Commons. If the sovereign does not attend, the Lords Commissioners bid the Usher to *desire* the Commons' presence. In any case, the commoners present themselves, and the king (or, in his absence, the Lord Chancellor) reads the Speech from the Throne, in which the cabinet — for it is the real author of the speech — sets forth its program for the session. Following the retirement of the sovereign, the commoners again withdraw, the Throne Speech is re-read and an address in reply is voted in each house, and " the Government," *i.e.*, the cabinet, begins the introduction of fiscal and legislative proposals. In the event that a session is not the first one of a parliament, the election of a Speaker and the administration of oaths are, of course, omitted.[1]

Physical Surroundings. — From the beginning of parliamentary history the meeting place of the houses has regularly been Westminster, on the left bank of the Thames. The last parliament to sit at any other spot was the third Oxford Parliament of Charles II, in 1681. The Palace of Westminster — in medieval times outside, although near, the principal city of the kingdom — was long the most important of the royal residences, and it was natural that its great halls and chambers, together with the adjoining abbey, should be utilized for parliamentary sittings. Of the enormous structure known as Westminster to-day (still technically a royal palace, although not a royal residence), practically all portions save old Westminster Hall were constructed after the fire of 1834. The Lords first occupied their present quarters in 1847 and the Commons theirs in 1850.[2]

[1] On the ceremonies involved in the opening, adjournment, prorogation, and dissolution of a parliament see Anson, *Law and Custom of the Constitution*, I, 61–77; J. Redlich, *Procedure of the House of Commons; a Study of its History and Present Form*, trans. by A. E. Steinthal (London, 1908), II, 51–67; T. E. May, *Treatise on the Law, Privileges, Proceedings, and Usage of Parliament* (11th ed., London, 1906), Chap. vii; A. Wright and P. Smith, *Parliament, Past and Present* (London, 1902), II, Chap. xxv; MacDonaugh, *Book of Parliament*, 96–114, 132–147, 184–203; and H. Graham, *Mother of Parliaments* (Boston, 1911), 135–157.

[2] MacDonaugh, *Book of Parliament*, 70–95; Graham, *Mother of Parliaments*, 60 80; Wright and Smith, *Parliament, Past and Present*, I, Chaps. xi xiii. The classic history of the old Palace of Westminster is E. W. Brayley and J. Britton, *History of the Ancient Palace and Late Houses of Parliament at Westminster* (London, 1836).

From opposite sides of a central lobby corridors lead to the halls in which the sittings of the two bodies are held, these halls facing each other in such a manner that the king's throne at the south end of the House of Lords is visible from the Speaker's chair at the north end of the House of Commons. The room occupied by the Commons is not large, being but seventy-five feet in length by forty-five in breadth. It is bisected by a broad aisle, at the upper end of which is a large table for the use of the clerk and his assistants, and beyond this the raised and canopied chair of the Speaker. "Facing the aisle on each side long rows of high-backed benches, covered with dark green leather, slope upward tier above tier to the walls of the room; and through them, at right angles to the aisle, a narrow passage, known as the gangway, cuts across the House. There is also a gallery running all around the room, the part of it facing the Speaker being given up to visitors, while the front rows at the opposite end belong to the reporters, and behind them there stands, before a still higher gallery, a heavy screen, like those erected in Turkish mosques to conceal the presence of women, and used here for the same purpose."[1] The rows of benches on the gallery sides are reserved for members, but they do not afford a very desirable location and are rarely occupied, save upon occasions of special interest. In the body of the House there are fewer than 350 seats for 707 members. As a rule, not even all of these are occupied, for there are no desks, and the member who wishes to read, write, or otherwise occupy himself seeks the library or other rooms adjoining.[2] The front bench at the upper end of the aisle, at the right of the Speaker, is known as the Treasury Bench and is reserved for members of the ministry.

[1] Lowell, *Government of England*, I, 249. Visitors, technically "strangers," are present only on sufferance and may be excluded at any time; but the ladies' gallery is not supposed to be within the chamber, so that an order of exclusion does not reach the occupants of it. In the autumn of 1908, however, the disorderly conduct of spectators in the ladies' and strangers' galleries caused the Speaker to close these galleries during the remainder of the session. In 1738 the House declared the publication of its proceedings "a high indignity and a notorious breach of privilege," and, technically, such publication long remained illegal. In 1771, however, the reporters' gallery was fitted up, and through a century and a quarter the proceedings have been reported and printed as a matter of course. On the status of the public and the press in the chamber see Ilbert, *Parliament*, Chap. viii; *ibid.*, "The Secret Sittings of the House of Commons," in *Polit. Sci. Quar.*, Mar., 1917; Redlich, *Procedure of the House of Commons*, II, 28–38; MacDonaugh, *Book of Parliament*, 310–329, 350–365; and Graham, *Mother of Parliaments*, 259–287.

[2] Forty members make a quorum. Except upon occasions of special interest, the number of members actually occupying the benches is likely to be less than two hundred, although most of the remaining members are within the building or, in any case, not far distant.

The corresponding bench at the Speaker's left is similarly reserved for the leaders of the Opposition. In so far as is possible in the lack of a definite assignment of seats, members of avowed party allegiance range themselves behind their leaders, while members of more independent attitude seek places below the gangway. "The accident that the House of Commons sits in a narrow room with benches facing each other, and not, like most continental legislatures, in a semi-circular space, with seats arranged like those of a theater, makes for the two-party system and against groups shading into each other." [1]

The hall occupied by the Lords is smaller and more elaborately decorated than that occupied by the Commons. It contains cross benches, but in the main the arrangements that have been described are duplicated in it. For social and ceremonial purposes there exists among the members a fixed order of precedence.[2] In the chamber, however, the seating is arranged without regard to this order, save that the bishops occupy as a group the "Episcopal Bench," consisting strictly of four benches immediately to the right of the woolsack.[3] The Government peers occupy the benches to the right of the woolsack and the Opposition those to the left, while members who prefer a more neutral position take their places on the cross benches between the table and the bar.[4]

Officers of the House of Commons: the Speaker. — The principal officers of the House of Commons are the Speaker, the Clerk and his two assistants, the Sergeant-at-Arms and his deputies, the Chaplain, and the Chairman and Deputy Chairman of Ways and Means. The Clerk and the Sergeant-at-Arms, together with their assistants, are appointed for life by the king, on nomination of the premier, but the Speaker and the Chairman and Deputy Chairman of Ways and Means are elected for a single parliament by the House.[5] All save the Chairman and his deputy are, strictly, non-political officers. The Clerk

[1] Ilbert, *Parliament*, 124. The chamber is fully described in Wright and Smith, *Parliament, Past and Present*, Chap. xix.

[2] This order runs: Prince of Wales, other princes of the royal blood, Archbishop of Canterbury, Lord Chancellor, Archbishop of York, Lord President of the Council, Lord Privy Seal, the dukes, the marquises, the earls, the viscounts, the bishops, and the barons.

[3] In the days of Elizabeth the presiding official sat upon a sack actually filled with wool. He sits now, as a matter of fact, upon an ottoman, upholstered in red. But the ancient designation of the seat survives.

[4] For full description, with illustrations, see Wright and Smith, *Parliament, Past and Present*, Chap. xviii.

[5] In point of fact, the Chairman and Deputy Chairman retire when the ministry by which they have been nominated goes out of office.

signs all orders of the House, indorses bills sent or returned to the Lords, reads whatever is required to be read during the sittings, records the proceedings of the chamber, and, with the concurrence of the Speaker, supervises the preparation of the Official Journal. The Sergeant-at-Arms attends the Speaker, enforces the House's orders, and presents at the bar of the House persons ordered or qualified to be so presented. The Chairman of Ways and Means (in his absence the Deputy Chairman) presides over the deliberations of the House when the body sits as a committee of the whole,[1] and exercises supervision over private bill legislation. Although a political official, he preserves, in both capacities, a strictly non-partisan attitude.

The speakership arose from the need of the House, when it was merely a petitioning body, for a recognized spokesman; and although the known succession of Speakers begins with Sir Thomas Hungerford, who held the office in the last parliament of Edward III (1377), there is every reason to suppose that at an even earlier date there were men whose functions were substantially equivalent. The Speaker is elected at the beginning of a parliament by and from the members of the House, and his tenure of office, unless terminated by resignation or death, continues through the term of that parliament. The choice of the House is subject to the approval of the crown; but, whereas in earlier days the king's will was in this matter very influential, the last occasion upon which a Speaker-elect was rejected by the sovereign was in 1679. Although nominally elected, the Speaker is in fact chosen by the cabinet, and he is reasonably certain to be taken from the party in power. During the nineteenth century, however, it became customary to reëlect a Speaker as long as he was willing to serve, regardless of party affiliation.

The functions of the Speaker are regulated in part by custom, in part by rules of the House, and in part by general legislation, They are numerous and, in the aggregate, highly important. The Speaker is, first of all, the presiding officer of the House. In this capacity he is a strictly non-partisan moderator whose business it is to maintain decorum in deliberations, decide points of order, put questions, and announce the result of votes. The non-partisan aspect of the English speakership sets the office off in sharp contrast with its American counterpart. "It makes little difference to any English party in Parliament," says Bryce, "whether the occupant of the chair has come from their own or from hostile ranks. . . . A custom as strong as law forbids

[1] On this account he is commonly known as the Chairman of Committees.

him to render help to his own side even by private advice. Whatever information as to parliamentary law he may feel free to give must be equally at the disposal of every member."[1] Unlike every other member of the House, the Speaker makes no political address when he seeks reëlection from his constituency at a general election. He never publicly discusses politics; he never so much as enters a political club. Except in the event of a tie, he does not vote, even when, the House being in committee, he is not occupying the chair. In the second place, the Speaker is the spokesman and representative of the House, whether in demanding privileges, communicating resolutions, or issuing warrants. There was a time when he was hardly less the spokesman of the king than the spokesman of the Commons, but the growth of independence of the popular chamber enabled him long ago to cast off this dual and extremely difficult rôle. The Speaker, furthermore, declares and interprets, although he in no case makes, the law of the House. "Where," says Ilbert, "precedents, rulings, and the orders of the House are insufficient or uncertain guides, he has to consider what course would be most consistent with the usages, traditions, and dignity of the House and the rights and interests of its members, and on these points his advice is usually followed, and his decisions are very rarely questioned. . . . For many generations the deference habitually paid to the occupant of the chair has been the theme of admiring comment by foreign observers."[2] Finally, the fact should be recalled that the Parliament Act of 1911 gives the Speaker sole power, when doubt arises, to determine whether a given measure is or is not to be considered a money bill. Upon his decision may hinge the policy of the Government concerning an important measure, and even the fate of the measure itself.

The Speaker's symbol of authority is the mace, which is carried before him when he formally enters or leaves the House, and lies on the table before him when he is in the chair. He has an official residence, and he receives a salary of £5000 a year. Upon retirement from office he is practically certain to be pensioned and to be raised to the peerage; indeed it is a tradition of a hundred years' standing that a Speaker shall not fall back into the rank and file of the House after the end of his service in the chair.[3]

[1] *American Commonwealth*, I, 135. [2] *Parliament*, 140–141.

[3] On the officers of the House of Commons see Lowell, *Government of England*, I, Chap. xii; on the speakership, Redlich, *Procedure of the House of Commons*, II,

Committees of the House of Commons. — Like all important and numerous legislative bodies, the House of Commons expedites business by making large use of committees; as recently as 1919 the number of committees was increased, and the rôle played by committees in the consideration of legislative and fiscal proposals was much augmented.[1] The committees regularly employed in recent times are of five main kinds: (1) the Committee of the Whole; (2) select committees on public bills; (3) sessional committees on public bills; (4) standing committees on public bills; and (5) committees on private bills. Until 1907 a public bill, after its second reading, went normally to the Committee of the Whole; since the date mentioned, it goes there only if the House so determines. The Committee of the Whole is simply the House of Commons, presided over by the Chairman of Ways and Means in the place of the Speaker, and acting under rules of procedure which permit almost unrestricted discussion and in other ways lend themselves to the free consideration of the details of a measure. When the subject in hand relates to the revenues the body is known, technically, as the Committee of Ways and Means; when to appropriations, it is styled the Committee of the Whole on Supply, or simply the Committee of Supply.[2]

Select committees consist, as a rule, of fifteen members, and are constituted to investigate and report upon specific subjects or measures. It is through them that the House collects evidence, examines witnesses, and otherwise obtains the information required for intelligent legislation. After a select committee has fulfilled the immediate purpose for which it was set up it passes out of existence. Each such committee chooses its chairman, and each keeps detailed records of its proceedings, which are included, along with its formal report, in the published parliamentary papers of the session. The members may be elected by the House, but in practice the appointment of some or all is left to the Committee of Selection, which itself consists of eleven members chosen by the House at the beginning of each session. This Committee of Selection, which appoints members not only of select committees but also of standing committees

131–171; Graham, *Mother of Parliaments*, 119–134; MacDonaugh, *Book of Parliament*, 115–132; Porritt, *Unreformed House of Commons*, I, Chaps. xxi–xxii; A. I. Dasent, *The Speakers of the House of Commons from the Earliest Times to the Present Day* (New York, 1911); and G. Mer, *Les speakers: étude de la fonction présidentielle en Angleterre et aux États-Unis* (Paris, 1910).

[1] See p. 170.

[2] See p. 189.

and of committees on private and local bills, is made up after conference between the leaders of the Government and of the Opposition, and, both theoretically and actually, it ignores party lines in the appointments which it makes. The number of select committees is, of course, variable, but it is never small. A few are constituted for an entire year and are known as sessional committees. Of these, the Committee of Selection is itself an example; others are the Committee on Public Accounts and the Committee on Public Petitions.

Beginning in 1882, certain great standing committees have been created, to the end that the time of the House may be farther economized. In 1907 the number of such committees was raised from two to four, each consisting of from sixty to eighty members; and all bills except money bills, private bills,[1] and bills for confirming provisional orders[2] — that is to say, substantially all public non-fiscal proposals — were thenceforth required to be referred to one of these committees (the Speaker determining which one) unless the House directed otherwise. With a view to expediting business still farther, the number of standing committees was raised in 1919 to six; and whereas before that date no standing committee could sit while the House was in session except in pursuance of a motion offered by the member in charge of the bill before the committee, the rules now permit this to be done without any restriction.[3] It is expected that measures referred to a standing committee will be so thoroughly scrutinized and evaluated by it that they will consume no great amount of the working time of the House as a whole. When the number of standing committees was increased in 1919 the size of each was reduced to from forty to sixty, with the provision that the Committee of Selection may add not fewer than ten nor more than fifteen members to a committee in respect to any bill referred to it, and to serve during the consideration of that bill.[4] These additional and temporary members are intended, of course, to be experts on the subject in hand. The chairman of each committee is selected (from its

[1] A private bill is one which has in view the special interest of some locality, person, or group of persons, rather than the general interests of the state.

[2] A provisional order is an order issued by an executive officer or department of the government authorizing a project in behalf of which application has been made. It is "provisional" because it is not finally valid unless confirmed by Parliament. See p. 196.

[3] On a division being called in the House, however, the chairman of a standing committee is required to suspend the proceedings of the committee for such time as will, in his judgment, enable members to vote in the division.

[4] This does not apply to the committee on Scottish affairs.

own ranks) by a "chairman's panel" of from eight to twelve members designated by the Committee of Selection.[1]

Organization of the House of Lords. — It is required that the two houses of Parliament shall invariably be convened together; and one may not be prorogued without the other. The actual sittings of the Lords are, however, very much briefer and more leisurely than are those of the Commons. Normally the upper chamber meets but four times a week, and by reason of lack of business or indisposition to consume time in the consideration of measures whose final enactment is assured, sittings are frequently concluded within an hour; although, of course, there are occasions upon which the chamber deliberates seriously and at much length. A quorum for the transaction of business is three. However, it is but fair to add that if a division occurs upon a bill and it is found that there are not thirty members present, the question is declared not to be decided. Save upon formal occasions and at times when there is under consideration a measure in whose fate the members are specially interested, attendance is always scant. There are members who after complying with the formalities incident to taking a seat, rarely, and in some instances never, reappear among their colleagues. It thus comes about that, despite the fact that nominally the House of Lords is one of the largest of the world's law-making assemblies, the chamber in reality suffers little from the unwieldiness characteristic of deliberative bodies of great size. The efficiency of the House is more likely to be impaired by paucity of attendance than otherwise.

The officers of the House of Lords are almost exclusively appointive. Except during the trial of a peer,[2] the presiding official is the Lord Chancellor, who, as we have seen, is named by the king on the advice of the premier. The duty of presiding in the upper chamber is, of course, but one of many that fall to this extraordinary dignitary. If at the time of his appointment an incumbent is not a peer, he is reasonably certain to be created one, although there is no legal requirement to this effect. The theory is that the woolsack which serves as the presiding official's seat is not within the chamber proper, and that the official him-

[1] On committees on private bills see p. 195. The committees of the House of Commons as they were before the changes of 1919 are described in Lowell, *Government of England*, I, Chap. xiii; Marriott, *English Political Institutions*, Chap. xi; Ilbert, *Parliament*, Chap. vi; Redlich, *Procedure of the House of Commons*, II, 180–214; and May, *Treatise on the Law, Privileges, Proceedings, and Usage of Parliament*, Chaps. xiii–xiv.

[2] See p. 173.

self, as such, is not a member of the body. The powers allowed him are not even those commonly belonging to a moderator. In the event that two or more members request the privilege of addressing the chamber, the House itself decides which shall have the floor. Order in debate is enforced, not by the Chancellor, but by the members, and when they speak they address, not the chair, but "My Lords." Although, if a peer, the Chancellor may speak and vote as any other member, he has as presiding officer no casting vote. In short, the position which the Chancellor occupies in the chamber is purely formal.

In addition to "deputy speakers," designated to preside in the Chancellor's absence, the remaining officials of the Lords who owe their positions to governmental appointment are the Clerk of Parliament, who keeps the records; the Sergeant-at-Arms, who personally attends the presiding officer and acts as custodian of the mace; and the Gentleman Usher of the Black Rod, a pompous dignitary whose function it is to summon the Commons when their attendance is required and to play a more or less useful part upon other ceremonial occasions. The one important official whom the House itself elects is the Lord Chairman of Committees, whose duty it is to preside in Committee of the Whole.

Privileges of Members. — On the basis in part of custom and in part of statute, there exists a body of definitely established privileges, some of which appertain to the Commons as a chamber, some similarly to the Lords, and some to the individual members of both houses. The privileges which at the opening of a parliament the newly elected Speaker "requests" and, as a matter of course, obtains for the chamber over which he presides include principally those of freedom from arrest, freedom of speech, access to the sovereign, and a "favorable construction" upon the proceedings of the House. Freedom from arrest is enjoyed by members during a session and a period of forty days before and after it, but it does not protect a member from the consequences of any indictable offense nor, in civil actions, from any process save arrest. Freedom of speech, finally guaranteed in the Bill of Rights, means simply that a member may not be held to account by legal process outside Parliament for anything he may have said in the course of the debates or proceedings of the chamber to which he belongs. The right of access to the sovereign belongs to the Commons collectively through the Speaker, but to the Lords individually. With the growth of parliamentary government both it and the privilege of "favor-

able construction" have ceased to have practical importance. Another privilege which survives is that of exemption from jury duty, although no longer of refusing to attend court in the capacity of a witness. Each house enjoys the privilege — for all practical purposes now the *right* — of regulating its own proceedings, of committing persons for contempt, and of judging the qualifications of its members. The adjudication of disputed elections, however, the House of Commons, as has been explained, handed over in 1868 to the courts. A privilege jealously retained by the Lords is that of trial in all cases of treason or felony by the upper chamber itself, under the presidency of a Lord High Steward appointed by the crown. The Lords are exempt from arrest in civil causes, not merely during and immediately preceding and succeeding sessions, but at all times; and they enjoy all the rights, privileges, and distinctions which, through law or custom, have become inherent in their several dignities.[1]

Payment of Members of the House of Commons. — An important step in the democratization of the House of Commons was the decision in 1911 to begin paying members a salary out of the national treasury. In the Middle Ages county and borough representatives received, as a rule, some compensation from their constituents. The expense thus entailed was, however, considered a burden, and many constituencies applied to be discharged from the exercise of so costly a privilege. In the Tudor period payment of members became obsolete.[2] The cost of seeking election and of maintaining oneself as a parliamentary member has always been heavy, and for centuries men of slender means were practically debarred from candidacy for seats. After 1900 the Labor party began to subsidize its needy representatives; but such aid reached only a small group of members and was of an entirely private and extra-legal nature. Public and systematic payment of members, to the end that poor but capable men might not be kept out of the Commons, was demanded by the Chartists three quarters of a century

[1] On the privileges of the Commons see Anson, *Law and Custom of the Constitution*, I, 153–189; Lowell, *Government of England*, I, Chap. xi; Walpole, *Electorate and Legislature*, Chap. v; Redlich, *Procedure of the House of Commons*, III, 42–50. A standard work in which the subject is dealt with at length is May, *Treatise on the Law, Privileges, Proceedings, and Usage of Parliament* (see especially chaps. iii–vi).

[2] The last person known to have received pay regularly as a member was the poet Andrew Marvell, who sat for Hull during the first eighteen years of the reign of Charles II. Among devices employed by thrifty constituencies in earlier times may be mentioned the custom which prevailed in Rochester of making any stranger who settled within the city's gates liable to serve a term in Parliament at his own expense.

ago, and from time to time after 1870 there was agitation for it. In 1893, and again in 1895, a resolution in favor of the payment of members was adopted in the Commons, and in 1906 a resolution was carried to the effect that every member should be paid a salary of £300 annually. But not until 1911 could a measure of the kind be got through the upper chamber.

Fresh impetus was afforded by the "Osborne Judgment," in which, on an appeal from the lower courts, the House of Lords ruled in December, 1909, that the payment of parliamentary members as such from the dues collected by labor organizations was contrary to law.[1] The announcement of the decision was followed by persistent demand on the part of the labor elements for legislation to reverse the ruling. In connection with the budget presented to the House of Commons by the Chancellor of the Exchequer May 16, 1911, the proposition was made, not to take action one way or the other upon the Lords' decision, but to provide for the payment to all non-official members of the House of Commons of a yearly salary of £400 ($2000); and on August 10 a resolution was carried in the Commons providing for "the payment of a salary at the rate of £400 a year to every member of the House, excluding any member who is for the time being in receipt of a salary as an officer of the House or as a minister, or as an officer of His Majesty's Household." Most of the Unionists were opposed to the innovation, and a number of Liberals did not like it. But the Government was bent on carrying it through as the only practicable means of escape from the difficulties in which it was involved with its ally, the Labor party; and the measure, in due course, became law.[2]

[1] Osborne *vs.* Amalgamated Society of Railway Servants. W. V. Osborne, foreman porter at Clapton station on the Great Western Railway and secretary of the Walthamstow branch of the Amalgamated Society, objected to the rule of his union requiring contributions from all members towards the payment of maintenance allowance to labor representatives in Parliament. Many trade unionists shared his views, and a test case was brought, in the endeavor to show that the rule was *ultra vires*, and hence void. The King's Bench decided against the plaintiff, but the Court of Appeal reversed the judgment, and the case was taken to the House of Lords, which sustained the intermediate tribunal. See Ogg, *Economic Development of Modern Europe*, 434–440; S. and B. Webb, *History of Trade Unionism* (new ed., London, 1911), 344–408; W. V. Osborne, *My Case: the Cause and Effect of the Osborne Judgment* (London, 1910); H. W. Horwill, "The Payment of Labour Representatives in Parliament," in *Polit. Sci. Quar.*, June, 1910.

[2] The effect of the Osborne Judgment was to debar trade unions from devoting their funds not only to political purposes but to various other objects in which the unions and their members are interested. A Scottish court went so far as to hold that a union had no power to pay the expenses of delegates to the annual trade union congress. Protests from labor against these drastic restraints led, in 1913, to a Trade Union Act, which not only laid down a clearer definition of the term

The payment of salaries to the members of great elective legislative bodies is not without disadvantages. But it is fundamentally justifiable, and it is to be observed that Great Britain is only one of several European nations that in recent years have adopted the policy. Germany did so in 1906, and Italy in 1912. The amount of the salary provided by the British legislation of 1911 is not large (although it is far larger than that provided in continental countries); but it is ample to make candidacy for seats possible for numbers of men who formerly could not under any circumstances contemplate a public career.

"trade union," but specified the conditions under which a trade union may use its funds. The purport of the act is (1) that a trade union may apply its funds, without restriction, for any lawful objects or purposes (other than political objects) which are at the time authorized under its constitution, and (2) that a trade union may raise funds for political purposes, but only under two absolute conditions, namely, that a resolution in favor of the political objects contemplated shall have been passed by the members of the union by secret ballot, and that no compulsion shall be placed upon members to make such contributions. In both the Court of Appeal and the House of Lords the judges were influenced by the fact that the pledge rule of the Labor party left the parliamentary representative no discretion. This rule was softened in 1911, although Labor members have continued to be bound by something more than the ordinary obligations of party loyalty. This change helped pave the way for the legislation of 1913. See p. 279.

CHAPTER XI

PARLIAMENTARY FUNCTIONS AND PROCEDURE: THE CABINET SYSTEM

Formal and Theoretical Aspects. — The entire political development of modern England centers around two great facts: the growth of the power of Parliament and the establishment of popular control in the predominant chamber, the House of Commons. Upon the vastness of the powers attained by the two houses something has already been said; it has been pointed out that Parliament has long since gained authority to alter or add to the national constitution at will, and that many, if not most, of the great constitutional changes of recent times have come about in this way. Closely following the power of constitutional amendment comes that of general legislation. It cannot be said that Parliament is the author of all English law. The great body of the common law has sprung from sources entirely outside legislative halls. But in so far as national laws are *enacted* to-day, it is Parliament, directly or indirectly, that enacts them. There is no subject upon which Parliament cannot legislate, no sort of law that it cannot put on the statute books, no existing law (written or unwritten) that it cannot modify or rescind. It goes without saying that the volume of legislation enacted by Parliament is enormous. The House of Commons, at all events, is always deluged with urgent business; and while procedure has been expedited by the more extensive use of committees, and by other devices to be described presently, matters of great importance often lie over for years awaiting a favorable opportunity for their consideration. Similarly, the revenues which come into the Treasury and which can be turned to use independently of Parliament would hardly carry on the business of government for a day, and Parliament (in effect, the House of Commons) not only makes possible, by its appropriation acts, the legal expenditure of practically all public moneys, but it provides, by its measures of taxation, the funds from which almost all appropriations are made.

Furthermore, Parliament (again, mainly the House of Commons) has full power to inquire into, criticize, and direct the

work of administration. An essential feature of the English system is that the ministers shall invariably be members of Parliament, that they shall retain office only so long as they command the support of a majority in the House of Commons, and that the cabinet — the inner circle composed of the principal ministers — shall serve practically as an executive committee of Parliament for the general management of the administrative machinery which Parliament sets up and maintains. "Parliament," once declared a leading member of the House of Lords, "makes and unmakes our ministries, it revises their action. Ministries may make peace and war, but they do so at pain of instant dismissal by Parliament from office; and in affairs of internal administration the power of Parliament is equally direct. It can dismiss a ministry if it is too extravagant or too economical; it can dismiss a ministry because its government is too stringent or too lax. It does actually and practically in every way directly govern England, Scotland, and Ireland."[1]

Loss of Power to the Cabinet and to the Electorate. — All of the great powers thus attributed to Parliament unquestionably belong to it. However, they are actually exercised by the two houses with not quite so much initiative, continuity, and force as these broad statements would imply; and it becomes necessary to look somewhat beneath the surface to discover the true situation. Such scrutiny reveals the fact that, so far as the actual exercise of its powers is concerned, Parliament has lost, and is losing, on the one side to the cabinet, and on the other to the electorate. For the moment there is something shocking in this discovery; we had been accustomed to think of Parliament as the great organ of popular government, and a diminution of the powers which it wields suggests a recession of democracy. But reassurance comes when we reflect that loss of power to the cabinet is not necessarily inconsistent with popular government, since the cabinet is made up largely of elected members of Parliament, and is responsible to the House of Commons; while, of course, a loss to the electorate means throwing power back directly into the hands of the people.

To this last-mentioned development three things have chiefly contributed. The first is the great increase of popular information and the sharpening of public opinion upon political affairs, made possible by the printing press, the telegraph, and other aids to quick and cheap dissemination of news and ideas. "A

[1] The Duke of Devonshire, quoted in Low, *Governance of England* (new ed.), 57–58.

debate, a vote, or a scene," says Lowell, "that occurs in Parliament late at night is brought home to the whole country at breakfast the next morning, and prominent constituents, clubs, committees, and the like, can praise or censure, encourage or admonish, their member for his vote before the next sitting of the House."[1] Under the constant gaze of his constituents, the member is less free to act and speak and vote as he likes than was his predecessor of a hundred years ago. A second factor in the situation is the growth of the idea of the referendum, or the popular mandate. Legally, Parliament is still free to make constitutional changes and to enact ordinary legislation at will. But in the past quarter-century, and especially since the sharp political struggles of 1909–11, the view has come to be widely held that before taking final action on matters of great importance the houses, through their leaders, ought to consult the nation (ordinarily by means of a dissolution, followed by a national election), so that definitive legislation may be based on a fresh and unmistakable mandate from the people. A third, and more important, factor is the remarkable growth of the power of the cabinet, and the actual supplanting, in a considerable measure, of cabinet responsibility to the House of Commons by cabinet responsibility directly to the electorate. This matter of the cabinet's increased power, as it affects Parliament, calls for some comment.

Cabinet and Parliament in Legislation. — A hundred years ago, and less, the members of the cabinet had comparatively little to do with law-making. They were already, with only an occasional exception, members of Parliament. But their duties were mainly executive, and they bore little general responsibility for the legislation that was enacted. The public demand, however, that came upon them as administrators for remedial legislation, the growing complexity of the relations between legislation and administration, and the increasing compactness and *morale* of the inner ministerial group — in short, the ripening of the cabinet system — brought, during the nineteenth century, a totally changed situation. The cabinet of to-day not only actively participates in law-making; it decides what important measures are to be brought before the houses, puts these measures into form, introduces them, explains them, defends them, presses for their passage, takes full responsibility for them after they are passed, and gives up the attempt to govern if they, or any of them, are definitely rejected

[1] *Government of England*, I, 425.

by the popular chamber. Every cabinet member has, of course, a seat in one house or the other; and in the house of which he is not a member he — or, more accurately, the executive department or office over which he presides — has as a rule a spokesman in the person of a parliamentary under-secretary. Measures which are brought forward by the cabinet are known as "Government bills." They are almost certain to be passed. What happens in case one of them is defeated depends on the circumstances; but the fall of the cabinet is not unlikely to be the result. Bills may be introduced by members of the two houses who do not belong to the cabinet. But little time is allowed for the consideration of these "private members' bills," and few are ever passed — none that are of a far-reaching and controversial nature.[1]

Indeed, the ordinary member plays a distinctly passive rôle. He listens to the speeches of the Government leaders in favor of their bills, and to the rejoinders by the leaders of the Opposition; he may, if he is adroit, manage to take some small part in the discussion himself; and he finally gives his vote one way or the other. How he will vote can usually be told in advance; for his vote helps to decide the fate not only of the bill under consideration, but of the ministry, and therefore the fortunes of his party. Liberal members must vote for the bills introduced by a Liberal ministry or ruin that ministry and drive their own party from power. Only by voting consistently and solidly against the Government's bills can the Opposition hope to make a showing that will attract strength and eventually build up the majority that is necessary to a cabinet overturn in its favor. Nowhere are party lines more sharply drawn than in the House of Commons (conditions in war time are, of course, exceptional); in few legislative bodies does the ordinary member exercise less personal initiative. "To say," concludes the American writer who has made the closest study of this subject, "that at present the cabinet legislates with the advice and consent of Parliament would hardly be an exaggeration; and it is only the right of private members to bring in a few motions and bills of their own, and to criticize Government measures, or propose amendments to them, freely, that prevents legislation from being the

[1] Under standing orders long in effect before the Great War, Government business had precedence at every sitting except after 8.15 on Tuesday and Wednesday evenings and at the sitting on Friday; and under motions for adjournment urgent matters of public importance might displace private members' motions even at these times. During the war the Government claimed all of the time, to the entire exclusion of private members' bills.

work of a mere automatic majority. It does not follow that the action of the cabinet is arbitrary. . . . The cabinet has its finger always on the pulse of the House of Commons, and especially of its own majority there; and it is ever on the watch for expressions of public feeling outside. Its function is in large part to sum up and formulate the desires of its supporters, but the majority must accept its conclusions, and in carrying them out becomes well-nigh automatic."[1]

Cabinet and Parliament in Administration. — A similar situation exists in the domain of executive and administrative work. Most of the members of the cabinet stand at the head of great executive offices or departments. As ministers, their primary business is to supervise the work carried on in and through these agencies; and ever since the cabinet system came into existence their direct and full responsibility to Parliament (actually, the House of Commons) for all of their executive actions has been accepted as axiomatic. The theory is that the ministers are answerable to the elected chamber for all that they do, singly in small or isolated matters, collectively in important ones; that their acts can be examined, criticized, revised, or annulled; and that the great powers which they wield can be stripped from them whenever the House of Commons chooses to withhold from them its support. Any member of the House of Commons may address a question (subject to the Speaker's judgment as to its propriety) to any minister of the crown who is also a member, with a view to obtaining information. Except in special cases, notice of questions must be given at least one day in advance, and half an hour or more is allowed at four sittings every week for the asking and answering of such questions. A minister may answer or decline to answer, but unless a refusal can be shown to arise from legitimate considerations of public interest its political effect may be embarrassing. Ordinarily there is no debate. But if the matter is an important one, and the House is not satisfied with the minister's reply, the questioner may ask leave to "move the adjournment of the House"; and if forty members support his request, a debate (nominally on that motion, but really on the substance of the question) takes place; and the Government, which formally opposes the motion, if defeated, must resign, or at least the

[1] Lowell, *Government of England*, I, 326. For criticism of the alleged autocracy of the cabinet in legislation see Jenks, *Government of the British Empire*, 112–113, and especially E. Clark, "Woman Suffrage in Parliament; a Test for Cabinet Autocracy," in *Amer. Polit. Sci. Rev.*, May, 1917.

minister concerned must.[1] The asking of questions is liable to abuse, but, as is pointed out by Ilbert, "there is no more valuable safeguard against mal-administration, no more effective method of bringing the searchlight of criticism to bear on the action or inaction of the executive government and its subordinates. A minister has to be constantly asking himself, not merely whether his proceedings and the proceedings of those for whom he is responsible are legally or technically defensible, but what kind of answer he can give if questioned about them in the House, and how that answer will be received."[2] Any member may bring forward a motion censuring the Government or any member or department thereof; and a motion of this sort, when emanating from the leader of the Opposition, leads to a vote of confidence upon whose result may hang the fate of the ministry. Special committees can be created to investigate the work of any minister or department, and their reports may be made the basis of a parliamentary censure.[3]

Legally, therefore, the ministers are subject to complete and continuous control, in their executive capacity, by Parliament. But this does not mean that Parliament actually participates in, or even habitually interferes with, the ministers' executive work. On the contrary, the executive is more free from legislative control than is either the president of the United States or the ministry in France.[4] Never, save when the Long Parliament, in the Cromwellian era, drew to itself the executive power and bestowed it upon committees which it appointed, has Parliament manifested a disposition to take part in any direct way in the exercise of that power. Nor has Parliament (since the period mentioned) ever taken to itself the function of administration. It receives the annual budget from the Chancellor of the Exchequer and gives it a reasonable amount of scrutiny; but the budget is made by the executive authority, and Parliament does not assume to alter it in any particular unless the executive assents. No money is voted except as requested by the crown. Parliament does not attempt to say

[1] Jenks, *Government of the British Empire*, 157. Compare the French practice of interpellation, described below. See p. 444.

[2] *Parliament*, 113–114.

[3] A parliamentary committee is constituted by an order of either house, which arms it with power to require the attendance of witnesses and the production of papers. A royal commission is constituted by the king on the advice of the ministry, and lacks the powers mentioned unless Parliament, by a special act, endows it with them. A departmental committee is constituted by a minister, under similar limitation.

[4] See p. 443.

how the departments shall be organized, how large their staffs shall be, what salaries shall be paid, or how reports shall be prepared. It does not require that the appointment of officials, high or low, shall come before it for approval or disapproval. In short, notwithstanding the legal omnipotence of Parliament, the government actually operates under a very substantial separation of powers; the executive and administrative branches are quite as autonomous as is the legislative branch. The fact that the same men are the chief executive authorities and the leaders in Parliament does not invalidate this statement. Executive and legislative functions, as such, are kept quite distinct; there is, as an American writer puts it, a separation of powers organically, although a close union of powers personally.[1] In contrast, the government of the United States is based upon a full separation of powers personally, but a large degree of union of powers organically. "A strong executive government, tempered and controlled by constant, vigilant, and representative criticism," is the ideal at which the parliamentary institutions of Great Britain are aimed.[2] After all is said, however, the fact remains that in fifty years scarcely a ministry has been turned out of office by Parliament because of its executive acts. Parliamentary inspection and criticism serve to keep the ministers in a wholesome state of vigilance. But, practically, they can be reasonably assured that so long as their legislative program holds the support of the popular chamber their tenure of office will be unbroken.[3]

Procedure: General Aspects. — The breadth of Parliament's legislative and fiscal powers has been sufficiently emphasized. Any sort of measure upon any conceivable subject may be introduced, and if a sufficient number of the members are so minded, may be enacted into law. No measure may become law until it has been submitted to both houses, but under the terms of the Parliament Act of 1911 it has been rendered easy for money bills, and not impossible for bills of other kinds, to be made law without the assent of the House of Lords. In the ordinary course of things, a measure is introduced in one house, put through three readings, sent to the other house, put there through

[1] Willoughby, *Government of Modern States*, 240.
[2] Ilbert, *Parliament*, 119.
[3] The reciprocal and changing relations of Parliament (especially the House of Commons) and the cabinet are discussed in Lowell, *Government of England*, I, Chaps. xvii–xviii; Low, *Governance of England*, Chap. v; Ilbert, *Parliament*, 111–119; Todd, *Parliamentary Government*, II, 164–185; C. D. Allin, "The Position of Parliament," in *Polit. Sci. Quar.*, June, 1914.

the same routine, deposited with the House of Lords to await the royal assent,[1] and, after having been assented to as a matter of course, proclaimed as law. Bills, as a rule, may be introduced in either house, by the Government or by a private member. It is important to observe, however, in the first place, that certain classes of measures may originate in one only of the two houses, *e.g.*, money bills in the Commons and bills of attainder and other judicial bills in the Lords, and, in the second place, that with the growth of the leadership of the Government in legislation the importance, if not the number, of privately introduced bills has steadily decreased, and likewise the chances of their enactment. The procedure of the two chambers upon bills is substantially the same, although, as is illustrated by the fact that amendments to bills may be introduced in the Lords at any stage but in the Commons at only stipulated stages, the methods of conducting business in the upper house are more elastic than those prevailing in the lower one.

Public Bills: Earlier Stages. — The process of converting a bill, whether introduced by the Government or by a private member, into an act of Parliament is long and intricate. The numerous steps that have to be taken are designed to prevent hasty and ill-advised legislation. Some of them have become mere formalities, involving neither debate nor vote, and the process — especially since certain changes were made in 1919 — is decidedly more expeditious than it once was. On the whole, the work of law-making is, however, still slow, and, as will be pointed out, much thought continues to be given to modes of speeding it up, or at all events relieving Parliament of the excessive pressure of business under which it still labors.

The first step is, of course, the drawing up, or "drafting," of the bill itself; for every project for a public act is presented to Parliament in a fixed form, stating enactment by "the King, Lords, and Commons," and setting forth in regular order, and in numbered clauses, the provisions that are desired. If the bill is a Government measure, and hence is sponsored by the cabinet, it is drafted by one of the two officials who share the title of Parliamentary Counsel to the Treasury and who are lawyers appointed by the crown for the purpose, or by some independent expert specially engaged. If it is a private member's bill, it is drafted by the member himself or by any one whom he may employ for the purpose. In any case, it bears on its back the

[1] Except that money bills remain in the custody of the House of Commons.

name of at least one member of the House, who is formally regarded as its introducer.[1]

The farther steps in the enactment of a bill in either house are, as a rule, five: first reading, second reading, consideration by committee, report from committee, and third reading.[2] Formerly the introduction of a measure commonly involved a speech explaining at length the nature of the proposal, followed by a debate and a vote, sometimes consuming, in all, several sittings. Nowadays only very important Government bills are introduced in this manner. In the case of all others, the first reading has become a formality. The member wishing to introduce a measure gives notice to that effect and proceeds to lay the bill on the table, *i.e.*, to have it circulated in printed form among the members of the House. Upon all measures except the most important Government projects, opportunity for debate is first afforded at the second reading, although the discussion at this stage must relate to general principles rather than to details. By the adoption of a motion that the bill be read a second time at some date falling beyond the anticipated limits of the session a measure may, however, be killed at its first reading.

Public Bills: Later Stages. — A bill which survives the second reading is "committed." Prior to 1907 it would go normally to the Committee of the Whole. Nowadays it goes there if it is a money bill or a bill for confirming a provisional order, or if, on other grounds, the House so directs; otherwise it goes to one of the four (six since 1919) standing committees, assignment being made by the Speaker.[3] This is the stage at which the provisions of the measure are considered in detail and amendments are introduced. After the second reading, however, a bill may be referred to a select committee, and in the event that this is done a step is added to the process; for after being returned by the select committee the measure goes to the Committee of the Whole or to one of the standing committees. Eventually the bill is reported back to the House. If reported by a standing committee, or in amended form by the Committee of the Whole, it is considered by the House afresh and in some detail; other-

[1] Jenks, *Government of the British Empire*, 143. The drafting of public bills is admirably described in C. Ilbert, *Legislative Methods and Forms* (Oxford, 1901), 77–97, and more briefly in the same author's *Parliament*, 79–81. Ilbert was a member of the Parliamentary Counsel for many years.

[2] Procedure will here be described as it is in the House of Commons.

[3] In 1919 the rules were modified so as to permit money bills also to be considered by standing committees, although the change was made for one session only. It is still uncertain whether the new rule will become permanent.

wise, the "report stage" is omitted. Finally comes the third reading, the question now being whether the House approves the measure as a whole. At this stage any amendment beyond verbal changes makes it necessary to recommit. The carrying of a measure through these successive stages is, as a rule, spread over several days, and sometimes several weeks, but it is not impossible for the entire process to be completed during the period of a sitting. Having been adopted by the originating house, a bill is taken by a clerk to the other house, there to be subjected to substantially the same procedure. If amendments are introduced, it is sent back in order that the suggested changes may be considered by the first house. If they are agreed to, the measure is sent up for the royal approval.[1] If they are rejected and an agreement between the two houses cannot be reached, the measure fails.[2]

[1] The manner in which the royal assent is actually given is thus described by Ilbert: "The assent is given periodically to batches of bills, as they are passed, the largest batch being usually at the end of the session. The ceremonial observed dates from Plantagenet times, and takes place in the House of Lords. The king is represented by lords commissioners, who sit in front of the throne, on a row of arm-chairs, arrayed in scarlet robes and little cocked hats. . . . At the bar of the House stands the Speaker of the House of Commons, who has been summoned from that House. Behind him stand such members of the House of Commons as have followed him through the lobbies. A clerk of the House of Lords reads out, in a sonorous voice, the commission which authorizes the assent to be given. The clerk of the crown at one side of the table reads out the title of each bill. The clerk of the Parliaments on the other side, making profound obeisances, pronounces the Norman-French formula by which the king's assent is signified; 'Little Peddlington Electricity Supply Act. Le Roy le veult.' Between the two voices six centuries lie." *Parliament*, 75–76. On the office of clerk of the Parliaments see Graham, *Mother of Parliaments*, 246.

[2] The legislative process is summed up by Lowell as follows: "Leaving out of account the first reading, which rarely involves a real debate, the ordinary course of a public bill through the House of Commons gives, therefore, an opportunity for two debates upon its general merits, and between them two discussions of its details, or one debate upon the details if that one results in no changes, or if the bill has been referred to a standing committee. When the House desires to collect evidence it does so after approving of the general principle, and before taking up the details. Stated in this way, the whole matter is plain and rational enough. It is, in fact, one of the many striking examples of adaptation in the English political system. A collection of rules that appear cumbrous and antiquated, and that even now are well-nigh incomprehensible when described in all their involved technicality, have been pruned away until they furnish a procedure almost as simple, direct, and appropriate as any one could devise." *Government of England*, I, 277–278.

The procedure of the House of Commons on public bills of a non-financial nature is described in Lowell, *ibid.*, I, Chaps. xiii, xvii, xix; Anson, *Law and Custom of the Constitution*, I, 240–267; Low, *Governance of England*, Chap. iv; Moran, *English Government*, Chap. xiv; Marriott, *English Political Institutions*, Chap. xi; Todd, *Parliamentary Government*, II, 138–163; and Ilbert, *Parliament*, Chap. iii. The subject is more intensively considered in Redlich, *Procedure of the House of Commons*, III, 85–112; May, *Treatise on the Law, Privileges, Proceedings,*

Money Bills: the "Estimates." — Money bills are handled in a different way; and in view of the importance of the fiscal operations of the state, the manner in which finance bills originate, the form which they take, the way in which they become law, and the extent to which they are amended and controlled by Parliament must at this point be made the subject of somewhat extended comment. The liberties of the English people were largely evolved from controversies and customs touching the public purse, and the law of the British constitution is grounded upon the principle of parliamentary grant of supplies and control of expenditure. Long before 1911 this authority of Parliament in the domain of finance was wielded mainly, and since that date it has been wielded solely, by the House of Commons. The modes of its exercise are, chiefly, four: (1) determination of the sources from which, and the conditions under which, the national revenues are to be raised; (2) grant of the money estimated by the ministers to be necessary to carry on the government, together with the appropriation of these grants to specific purposes; (3) criticism, in debate, of the manner in which the funds are spent; and (4) an audit of the accounts by a parliamentary officer, *i.e.*, the Comptroller and Auditor-General, and the farther examination of them by a parliamentary committee, *i.e.*, the Committee on Public Accounts. No taxes can be laid without the express sanction of the House of Commons, and no public money can be expended without similar authority, either in annual or other formal appropriation acts or in permanent statutes. Furthermore, the ministers are always subject to interrogation on the floor of Parliament concerning their use of public money; and the accounts of the spending departments and officers are scrupulously audited to make certain that the money voted by Parliament for a particular service has been spent upon that service and upon no other.

Such are the general principles and rules under which the fiscal system is now organized. How the system actually works

and Usage of Parliament, Chap. xviii; G. Walpole, *House of Commons Procedure, with Notes on American Practice* (London, 1902); C. Ilbert, *Legislative Methods and Forms;* and *ibid., The Mechanics of Law Making* (New York, 1914). Legislative procedure in a self-governing colony can be compared with English procedure by reading E. Porritt, *Evolution of the Dominion of Canada* (Yonkers, 1918), Chap. xiv. Procedure in the United States can be similarly compared by means of D. S. Alexander, *History and Procedure of the House of Representatives* (Boston, 1916). An illuminating historical and philosophical survey of English lawmaking is A. V. Dicey, *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth Century* (London, 1905).

may be at least partially brought to view by observing the manner in which finance bills are prepared, scrutinized, and enacted. The first great step, or series of steps, in arranging for the financial operations of the government in a given fiscal year is the preparation of the "estimates."[1] These estimates, as the term is officially employed, mean estimates of expenditure only, although, as will appear, computations of prospective revenues are also prepared. Three inflexible rules relating to expenditures have established themselves. The first is that no petition shall be received nor any motion entertained looking to a charge upon the public revenue unless the outlay is asked or supported by the crown. This rule, first adopted in 1706 as a defense against a flood of private members' petitions in behalf of persons claiming an arrear of pay as officers or making some other demand, became a standing order in 1713 and was brought up to date in 1852 and 1866. It totally prevents private members from introducing appropriation bills or resolutions, although it is not construed to prohibit non-ministerial resolutions favoring or opposing some specified kind of expenditure; and it averts most of the evils which are associated in the United States with the idea of the congressional "pork-barrel." The second fundamental rule is that every request for funds shall be submitted to the House of Commons in the form of an "estimate," *i.e.*, a document containing a careful calculation of the amount of money needed for a designated purpose, together with a demand upon Parliament that the stipulated sum be granted to the crown for the purpose specified.[2] The third rule is that all requests, *i.e.*, estimates, shall be examined and approved by the Treasury, which also must actually submit all requests except those for the Army and the Navy. Estimates are therefore invariably passed upon, before they are presented to Parliament, by an authority outside the department for which the money is asked; and inasmuch as the Treasury acts in this connection as the agent of the ministry, the estimates come to the House of Commons as recommendations — in form, as *demands* — of the executive as a whole.

In this connection it is essential also to observe that Parliament does not authorize all of the expenditures afresh every year. That part of expenditure which requires annual authorization is known as expenditure on Supply Services. That part

[1] The fiscal year begins on April 1 and ends on March 31.

[2] Willoughby, Willoughby, and Lindsay, *The System of Financial Administration of Great Britain*, 48.

which, although subject to alteration by Parliament at any time, does not require recurring authorization is called expenditure on the Consolidated Fund Services.[1] Consolidated Fund expenditures amount in peace time to about one third of the annual outlay, and include the charges of the national debt, the Civil List, the salaries of judges, and certain other payments. The Supply Services, for which money is voted afresh annually, normally absorb about two thirds of the total expenditure, and in 1919 they included the Army, Navy, Air, and Civil Services.[2] The estimates of which we are here speaking are only those made up yearly for the Supply Services.

Ministerial and Parliamentary Scrutiny of the Estimates. — The principal steps in the preparation of the estimates can be indicated briefly. First of all, matters of general policy that might entail large changes of expenditure, *e.g.*, a workman's insurance act or an increase of the army, are threshed out in conferences between the officers of the Treasury and representatives of the departments concerned, and also in cabinet discussions. The departments thus get a reasonably definite idea of how far the Treasury is willing to go in support of their projects, and of what outlays can be planned without risk of a cabinet veto. On October 1 preceding the fiscal year for which the estimates are to be prepared the Treasury sends a circular letter to all officials responsible for estimates requesting them to make up and submit estimates of the expenses of their departments in the coming year. All are asked to exercise the utmost economy and admonished not to adopt the easy method of assuming the estimates of the past year as the starting point for those of the next. The responsible officers of the department thereupon set their staffs at work upon the estimates, using the forms sent out from the Treasury on which comparative data have already been entered. Throughout the work the closest contact is maintained with the Treasury. The rules require that, in so far as possible, additions, omissions, or other alterations of the existing arrangements shall be referred to the Treasury, before the departmental proposals as a whole are formally presented. If the Treasury demurs, the department may appeal to the cabinet. But such appeals are rarely made unless the question is one of exceptional importance, and there

[1] See p. 76.

[2] It is to be observed, however, that, when voted, the appropriations for the Supply Services are paid out of the Consolidated Fund no less than those constituting a permanent charge upon that fund.

is a strong presumption that the cabinet will uphold the Treasury's position. The result is, as one writer puts it, that the estimates, when finally submitted by the departments, "represent little more than the statement of proposals that have already been agreed upon between the various submitting departments and the Treasury." [1] After the estimates from all departments have been whipped into shape, the Estimates Clerk in the Treasury gives them final scrutiny and puts them in readiness for consideration by Parliament. The estimates for the Civil Services are presented to the House of Commons by the Financial Secretary to the Treasury; those for the Army and the Navy, by the Secretary of State for War and the First Lord of the Admiralty respectively. Ordinarily, all estimates of expenditure are in the Treasury's hands by January 15.

Parliament convenes some time in February, and as a rule the estimates of expenditure are presented during the first two weeks of the session. On a date fixed at the opening of the session the House resolves itself into Committee of Supply, which is a committee of the whole, sitting under the presidency of the Chairman of Committees. From the middle of the seventeenth century until 1912 the estimates of expenditure could be considered only in Committee of Supply; and although, as will be pointed out, provision was made in the year mentioned for reference of some of them to a select committee, this arrangement was not very successful, and consideration in Committee of the Whole went on practically as before. After a preliminary debate on "grievances," which was once important but is meaningless now that Parliament holds the remedy for grievances in its own hand, the Committee of Supply proceeds to consider the estimates by successive "votes," *i.e.*, divisions — some one hundred and fifty in all — in which the estimates are grouped (corresponding as far as possible to distinct services) for purpose of discussion and of separate votes. Each "vote" becomes the basis of a "resolution of supply," which, upon being reported to the House, is readopted in the form of a bill; and eventually these bills are gathered into one grand Appropriation Act. At no stage of the process can a non-ministerial member move an increase in a "vote," for to do so would violate the rule which requires all proposals for expenditure to emanate from the crown. He may, however, move a reduction. The Committee of Supply can vote the grant asked of it, reduce it, or refuse it. It cannot increase it, annex a condition, or alter the

[1] Willoughby et al., *Financial Administration of Great Britain*, 61.

destination, although it may be able to induce the Government to introduce a revised estimate. The rules of the House allow only twenty days for the debates in Committee of Supply, and it invariably happens that most of the time is consumed on a few "votes," not necessarily the most important ones, and that many are passed with only the most perfunctory attention and with no discussion whatever.[1]

Estimates of Revenue: the Budget. — Meanwhile another set of estimates has been made ready, namely, the estimates of revenue. For these, too, the Treasury is primarily responsible. Estimates of the revenue which can be expected from existing taxes, from proposed increases, and from new taxes are drawn up for the Treasury by the Revenue Departments,[2] mainly by the Statistical Office of the Board of Customs and Excise; and proposals for modification of the revenue system, whether designed solely for revenue or partially with a view to social and economic regulation, are prepared by the Chancellor of the Exchequer. As soon as practicable after the opening of the new fiscal year (April 1) the Chancellor presents to the House of Commons, now reconstituted as the Committee of Ways and Means, certain statements, which, taken together, are designed to indicate not only the sums that have been asked and granted, but the prospective revenues and the steps that must be taken to render these revenues adequate to the national needs; in short, the Chancellor introduces the budget. In everyday usage the term "budget" is given several different meanings. The essence of a budgetary system, however, as opposed to a non-budgetary system, is, as one authority states it, that "in the former the effort is made, by those who are responsible for initiating financial measures, to consider both sides of the national account at one and the same time, or at least in their relations to each other, and to place them before the legislative branch where appropriations are requested, while in the latter, no such attempt is made."[3] The budgetary principle, as thus defined, is nowhere more fully operative than in Great Britain. Technically, the budget is the speech in which the Chancellor of the Exchequer reviews the financial results of the year just closed, summarizes the estimates of expenditure and revenue for the year just opening, and presents the Government's proposals for the increase, diminution, or other readjust-

[1] Young, *System of National Finance*, 72.
[2] Customs and Excise, Inland Revenue, and Post Office.
[3] Willoughby et al., *Financial Administration of Great Britain*, 255–256.

ment of taxation. Practically, it is the Financial Statement on which the speech is based — a document usually filling only a few pages of print, but buttressed by other documents giving in great detail the estimated income and expenditure of the year to which it applies.[1] Contrary to the situation in France and other continental countries, popular and parliamentary interest in the budget in Great Britain centers in the plans for taxation rather than in the estimates of expenditures.

Estimates of revenues are considered by the House of Commons under the same general conditions as estimates of expenditures. The Government's proposals are debated in committee of the whole, and, after adoption in the form of resolutions, are incorporated by the House in bills; private members may not move new taxation, although they may move to repeal or reduce taxes which the Government has not proposed to alter. The results of the deliberations are gathered annually in two main measures — the Finance Act, reimposing the tea duty and the income tax, and the Revenue Act, giving legal force to any resolutions passed in committee for the amendment of the revenue laws. As in the case of appropriations, taxes do not require to be authorized in full afresh every year. Indeed, whereas most expenditures are thus authorized, most taxes are not, being based on permanent statutes which are always subject to repeal or alteration but do not need to be annually renewed. Death duties, stamp duties, customs, excises — all are imposed by continuing statutes. Only the tea duty and the income tax are regularly reserved for annual authorization; although it must be added that the importance of these imposts in the revenue system is such that the disposition made of them largely determines the character of the fiscal arrangements for the year.

Lack of Parliamentary Control: Proposed Reforms. — On paper, the fiscal system thus outlined seems in full accord with a democratic scheme of government such as Great Britain boasts. There are, however, certain unsatisfactory features, of which the most serious is the practical limitations upon the control which Parliament can exercise over both taxation and expenditures, especially the latter. Speaking broadly, parliamentary control is, indeed, theoretical rather than actual, and prolonged discussion of the subject, in Parliament and outside, has not clearly demonstrated how it can be made otherwise. Four

[1] Curiously, these documents are at no stage brought together in a single coordinated statement. See Willoughby et al., *Financial Administration of Great Britain*, 267–268.

major difficulties appear. The first is the antiquated character of the rules of procedure followed in handling fiscal matters. These rules originated largely in the seventeenth and early eighteenth centuries, when it was still considered the duty of all good members to delay, postpone, or obstruct the royal demands for money, and the rules were framed with this end in view. Few changes have been made, and roundabout processes prevail where direct ones would be preferable; fictions lead to empty, and sometimes dilatory, ceremonies (*e.g.*, the debate on "grievances"); in short, as one critic has remarked, much of the ritual is now no more useful than the annual search for gunpowder in the cellarage.

A second more definite drawback is the lack of adaptation of the House of Commons, sitting as a committee of the whole, to consider the estimates adequately. The body is altogether too large for the kind of work that needs to be done. It cannot examine witnesses; its time is limited; its deliberations must perforce take the form of slow and general debate. A third disadvantage is the lack of intelligible financial information. On account of sundry features of the estimates and accounts as presented to Parliament, which are too technical and extensive to be explained here, both the quantity and the quality of the information at the disposal of the ordinary member are not such as to enable him, even if he had the requisite time and patience, to comprehend the fiscal plans of the Government in all of their parts and implications. Finally may be mentioned the fact that if a vote is challenged or a reduction moved, such a motion is treated as one of confidence, involving the fate of the Government. Financial criticism thus becomes merely political or party criticism; members of the party in power refrain from criticism to save appearances and to avoid the risk of placing the ministry in jeopardy, while the Opposition so utilizes the debates on Supply as to convert them from their proper character into discussions, on political lines, of the general policies of the Government.

The result is that parliamentary control is, save on rare occasions, a matter of mere form. The House of Lords no longer has the power to obstruct the adoption of money bills; the House of Commons, shorn by self-denying ordinances of the right either itself to originate proposals for expenditure or to increase the proposals submitted to it by the crown, normally assumes that the Government knows best what is needed and accepts whatever proposals are offered; and while the House

of Commons has the right to reduce the amounts called for, it is not equipped to exercise this power with any degree of intelligence and impartiality. The House, indeed, would often be glad to increase the amounts, but it has little interest in reducing them; in other words, the true guardian against extravagance is the executive, not the legislative, branch. Accordingly, it "is not surprising," says a committee which investigated the subject in 1917–18, "that there has not been a single instance in the last twenty-five years when the House of Commons by its own direct action has reduced, on financial grounds, any estimate submitted to it. . . . The debates in Committee of Supply are indispensable for the discussion of policy and administration. But so far as the direct effective control of proposals for expenditure is concerned, it would be true to say that if the estimates were never presented, and the Committee of Supply never set up, there would be no noticeable difference." [1] The only positive advantages that accrue from the consideration of the estimates — at all events, the estimates of expenditures — by the House is a certain enforcement of responsibility on the part of the executive for financial management through review, criticism, and discussion.

In general, the system has worked well, and most people are satisfied with it. There has been a feeling in some quarters, however, that the control of the House of Commons ought to be more real and effective. In 1902 a Select Committee on National Expenditure was instructed to inquire whether any plan could be adopted for enabling the House "more effectively to make an examination, not involving criticisms of policy, into the details of national expenditure." [2] This committee recommended, among other changes, the creation of a Select Committee on Estimates, which, without any power of direction or control, should have the duty each year of making a detailed investigation of estimates, organization, methods, and activities of some one service or group of services (to be designated by the Public Accounts Committee), and reporting the findings to Parliament. No action was taken until 1912. In that year the House of Commons set up a Select Committee on Estimates, charged with examining each session such of the estimates presented to the House as it should see fit to take up, and with reporting to the House any possible economies which it discovered. The new

[1] Quoted in *Edinb. Rev.*, Jan., 1920, 175.

[2] A series of similar inquiries made in 1887–89 by five different select committees yielded no important results.

committee worked diligently and intelligently. In 1912 it dealt with some Civil Service votes, in 1913 with Navy votes, and in 1914 it began on Army votes. Its labors were, however, too slow and too much cramped by the limitations imposed by the House to be of large value; and during the Great War the committee was in a state of suspended animation.

The war enormously increased the public expenditures; at the same time, even the theory of parliamentary control broke down. Hence the long-standing issue was brought to a crisis, and in July, 1917, a new Select Committee on National Expenditure was set the task of making a fresh study of the problem. In 1918 this committee presented an interesting series of reports, recommending, chiefly, (1) a more active financial supervision over the departments by the Treasury, (2) the appointment at the beginning of each session of Parliament of two standing committees on estimates of fifteen members each, which should examine the estimates with a view to discovering and suggesting economies; (3) establishment of the principle that a motion carried in Committee of Supply in pursuance of the recommendations of the Estimates Committees should not be taken to imply that the Government of the day no longer possessed the confidence of the House. The commission's report attracted much attention, and it has borne some fruit. Thus in 1919 the House adopted a rule for a single session which permitted the estimates to be considered by a standing committee, rather than solely by Committee of the Whole. Strong objection was raised on the ground that to deprive the House, in any degree, of its traditional right to criticize and control the executive through discussion of the estimates would rob it of its most valued and essential function. On the other hand, it was urged that the public interest required such a saving of the legislature's time, not to speak of the additional protection of the taxpayer's money. It is not clear that the new practice will definitely establish itself. If it does so, the procedure described in earlier portions of this chapter will be correspondingly altered.[1]

[1] Procedure on money bills is described in Lowell, *Government of England*, I, Chap. xiv; Anson, *Law and Custom of the Constitution*, I, 268–281; Ilbert, *Parliament*, Chap. iv; *ibid.*, *Legislative Methods and Forms*, 284–298; Redlich, *Procedure of the House of Commons*, III, 113–174; May, *Treatise on the Law, Privileges, Proceedings, and Usage of Parliament*, Chap. xxi. For more extended treatment see W. W. Willoughby, W. F. Willoughby, and S. M. Lindsay, *Financial Administration of Great Britain* (New York, 1917); R. Stourm, *The Budget*, ed. by W. F. McCaleb (New York, 1917); H. Higgs, *Financial System of the United Kingdom* (London, 1914); E. Young, *System of National Finance* (London, 1915); and A. J. V. Durell, *Principles and Practice of the System of Control over Parliamentary*

Private Bills. — So far as procedure goes, there is no distinction between a Government bill and a private member's bill. Both are public bills. But a private bill is handled in a manner peculiar to itself. A public bill is one which affects the general interests of the state, and which has for its object the promotion of the common good. A private bill is one which has in view the interest of some particular locality, person, or class of persons. The commonest object of private bills is to enable persons to enter into combination to undertake works of public utility — the building of railways or tramways, the construction of harbors or piers, the draining of swamps, the supplying of water, gas, or electricity, and other enterprises which in the United States would be regulated by state legislatures and city councils — at their own risk and for their own profit. All private bills originate in petitions, which must be submitted in advance of the opening of the session during which they are to be considered. Their presentation and the various stages of their progress are governed by detailed and stringent regulations, and fees are required from both promoters and opponents, so that the enactment of a private bill of some importance becomes a costly proceeding for the parties concerned, but also a source of considerable public revenue.

After having been scrutinized and approved by parliamentary officials known as Examiners of Petitions for Private Bills, a private bill is introduced in one of the two houses. Its introduction serves as its first reading. At its second reading debate may take place on the principle of the measure, and afterwards the bill, if opposed, is referred to a Private Bill Committee consisting of four members and a disinterested referee. If the bill is not opposed, *i.e.*, if no adverse petition has been filed by property owners, corporations, or other interests, the committee of reference, under a standing order of 1903, consists of the Chairman and Deputy Chairman of Ways and Means, two other members of the House, appointed by the Committee of Selection, and the Counsel to the Speaker. The committee stage of a contested bill assumes an essentially judicial aspect. Promoters and opponents are represented by counsel, witnesses are examined, and expert testimony is taken. After being reported by committee, the measure goes its way under the same regulations as those controlling the progress of public bills.

Grants (London, 1917). A useful discussion, embodying a summary of the work of the commission of 1917–18, is E. H. Davenport, *Parliament and the Taxpayer* (London, 1919), and a good brief account is J. A. R. Marriott, "Parliament and Finance," in *Edinb. Rev.*, Jan., 1920.

Two things, however, must be noted. The first is that while in theory the distinction between public and private bills is clear, in point of fact there is no little difficulty in drawing a line of demarcation, and the result has been the recognition of a class of "hybrid" bills, partly public and partly private in content, and handled under some circumstances as the one and under others as the other, or even under a procedure combining features of both. The second fact to be observed is that, in part to reduce expense and in part to procure the good will of the executive department concerned, it has become common for the promoters of enterprises requiring parliamentary sanction to make use of the device known as "provisional order." A provisional order is an order issued, after investigation, by a government department authorizing provisionally the undertaking of a project in behalf of which application has been made. It eventually requires the sanction of Parliament; but such orders are submitted to the houses in batches by the several departments, and their ratification is virtually assured in advance. It is pointed out by Lowell that during the years 1898–1901 not one tenth of the provisional orders laid before Parliament were opposed, and only one failed of adoption.[1]

Rules of the House of Commons. — "How can I learn the rules of the Commons?" is a question once put by an Irish member to Mr. Parnell. "By breaking them," was the philosophic reply. Representing, as it does, a long accumulation of deliberately adopted regulations, interwoven and overlaid with unwritten custom, the code of procedure under which the business of the House of Commons is conducted is indeed intricate. Lord Palmerston admitted that he never fully mastered it, and Gladstone was on many occasions an inadvertent offender against the "rules of the House." Prior to the nineteenth century, the rules were devised, as is pointed out by Anson, with two objects in view: to protect the House from hasty and ill-considered action pressed forward by the king's ministers, and to secure fair play between the parties in the chamber and a hearing for all. Not until 1811 was the business of the Government permitted

[1] *Government of England*, I, 385. On private bill legislation see Lowell, I, Chap. xx; Redlich and Hirst, *Local Government in England*, II, 338–351; Anson, *Law and Custom of the Constitution*, I, 291–300; May, *Treatise on the Law, Privileges, Proceedings, and Usage of Parliament*, Chaps. xxiv–xxix; Courtney, *Working Constitution of the United Kingdom*, Chap. xviii; MacDonaugh, *Book of Parliament*, 398–420. The standard treatise upon the subject is F. Clifford, *History of Private Bill Legislation*, 2 vols. (London, 1885–87). A later book of value is F. H. Spencer, *Municipal Origins; an Account of English Private Bill Legislation relating to Local Government, 1740–1835, with a Chapter on Private Bill Procedure* (London, 1911).

to obtain recognized precedence on certain days; but the history of the procedure of the Commons since that date is a record of (1) sharp reduction of the time during which private members may indulge in discussion of subjects or measures lying outside the Government's legislative program, (2) increasing limitation of the opportunity for raising general questions at the various stages of Government business, and (3) cutting down of the time allowed for discussing at all the projects to which the Government asks the chambers' assent.[1]

The rules governing debate and decorum are not only elaborate but, in some instances, of great antiquity. In so far as they have been reduced to writing they may be said to consist of (1) "standing orders," of a permanent character, (2) "sessional orders," operative during a session only, and (3) "general orders," indeterminate in respect to the period of application. In the course of debate all remarks are addressed to the Speaker, and in the event that the floor is desired by more than one member it rests with the Speaker to designate, with scrupulous impartiality, who shall have it. When a "division" is in progress and the doors are closed, members speak seated and covered, but at all other times they speak standing and uncovered. A speech may not be read from manuscript, and the Speaker has the right not only to warn a member against irrelevance or repetition but to compel him to terminate his remarks.[2] A member whose conduct is reprehensible may be ordered to withdraw and, upon vote of the House, may be suspended from service. Except in committee, a member may not speak twice upon the same question, although he may be allowed the floor a second time to explain a portion of his speech which has been misunderstood. Undue obstruction is not tolerated, and the Speaker may decline to put a motion which he considers dilatory.

Closure. — Debate may be farther kept within bounds by the use of closure, of which there are three recognized forms: simple closure, the "guillotine," and the "kangaroo." Ordinary closure dates originally from 1881. It was introduced in the standing orders of the House in 1882, and it assumed its present form in 1888. It sprang from the efforts of the House to curb the intolerably obstructionist tactics employed a generation ago by the Irish Nationalists; but by reason of the increasing mass of business to be disposed of and the tendency of large deliberative bodies to waste time, it has been found too useful

[1] Anson, *Law and Custom of the Constitution*, I, 253.
[2] On parliamentary oratory see Graham, *Mother of Parliaments*, 203–224.

to be given up. "After a question has been proposed," reads Standing Order 26, "a member rising in his place may claim to move 'that the Question be now put,' and unless it shall appear to the Chair that such motion is an abuse of the Rules of the House, or an infringement of the rights of the minority, the Question 'that the Question be now put' shall be put forthwith and decided without amendment or debate." Discussion may thus be cut off instantly and a vote brought on. Closure is inoperative, however, unless the number of members voting in the majority for its adoption is at least one hundred, or, in a standing committee, twenty.

A more effective device is that known as "closure by compartments," or "the guillotine." When this is employed the House, in advance of the consideration of a bill, agrees upon an allotment of time to the various parts or stages of the measure, and at the expiration of each period debate, whether finished or not, is closed, a vote is taken, and a majority adopts that portion of the bill upon which the guillotine has fallen. In recent years this device has been regularly used when an important Government bill is reserved for consideration in Committee of the Whole. Its advantage is economy of time, and also assurance that by a given date final action upon a measure shall have been taken. The form of closure nicknamed the "kangaroo" arose from the occasional authorization of the Speaker by the House to pick out for discussion from the amendments proposed for any clause of a given bill those which he deemed most important; whereupon those particular amendments could be debated, and no others. The Speaker was thus supposed to hop, kangaroo fashion, from amendment to amendment. In 1919 kangaroo closure was regularized by a standing order (27A) making the power of selecting amendments for debate a permanent, and no longer a specially granted, attribute of the authority of the chair. This saves much time, although it imposes fresh burdens on the already somewhat overtaxed Speaker.[1]

Votes and Divisions. When debate upon the whole or a portion of a measure ends, a vote is taken. It may or may not involve, technically, a "division." The Speaker or Chairman states the question to be voted on and calls for the ayes and noes. He announces the apparent result, and if his decision is not

[1] Redlich, *Procedure of the House of Commons*, I, 133–212; Graham, *Mother of Parliaments*, 158 172. An excellent illustration of the use of the guillotine is afforded by the history of the passage of the National Insurance Bill of 1911. See *Annual Register* (1911), 232–236.

challenged the vote is so recorded. If, however, any member objects, strangers are asked to withdraw (save from the places reserved for them), electric bells are rung throughout the building, the two-minute sandglass is turned, and at the expiration of the time the doors are locked. The question is then repeated and another oral vote is taken. If any member still refuses to accept the result as announced, the Speaker orders a division. The ayes pass into the lobby at the Speaker's right and the noes into that at his left, and all are counted by four tellers designated by the Speaker, two from each side, as the members return to their places in the chamber. This method of taking a division has undergone but little change since 1836. Under a standing order of 1888, amended and strengthened in 1919, the Speaker is empowered, in the event that he considers a demand for a division dilatory or irresponsible, to call upon the ayes and noes to rise in their places and be counted; but there is seldom need to resort to this variation from the established practice. "Pairing" is not unknown; and when the question is one of political moment the fact is made obvious by the activity of the party "whips." [1]

Procedure in the House of Lords. — The rules of procedure of the House of Lords are in theory simple, and in practice yet more so. Nominally, all measures of importance, after being read twice, are considered in Committee of the Whole, referred to a standing committee for textual revision, reported, and finally adopted or rejected. In practice the process is likely to be abbreviated. Few bills, for example, are actually referred to the revision committee. For the examination of such measures as seem to require it committees are constituted for the session, and others are created from time to time as need of them appears; but the comparative leisure of the chamber permits debate within the Committee of the Whole upon any measure which the members really want to discuss. Willful obstruction is almost unknown, so that there has never been occasion for the adoption of any form of closure. Important questions are decided, as a rule, by a division. When the question is

[1] On the conduct of business in the House of Commons see Lowell, *Government of England*, I, Chaps. xv–xvi; Ilbert, *Parliament*, Chap. v; Redlich, *Procedure of the House of Commons*, II, 215–264, III, 1–41; May, *Treatise on the Law, Privileges, Proceedings, and Usage of Parliament*, Chaps. viii–xii; Medley, *Manual of English Constitutional History*, 231–284; Graham, *Mother of Parliaments*, 225–258; and MacDonaugh, *Book of Parliament*, 217–247. On the work of the whips see especially Graham, *op. cit.*, 254–258, and on the publicity of proceedings, Ilbert, "Secret Sittings in the House of Commons," in *Polit. Sci. Quar.*, Mar. 1917.

put, those members who desire to register an affirmative vote repair to the lobby at the right of the woolsack, those who are opposed to the proposal take their places in the corresponding lobby at the left, and both groups are counted by tellers appointed by the presiding officer. A member may abstain from voting by taking his station on "the steps of the throne," technically considered outside the chamber. Prior to 1868 absent members were allowed to vote by proxy, but this indefensible privilege was abolished by standing order in the year mentioned and is likely never to be revived.[1]

Records. — The earliest extant records of parliamentary proceedings are the "rolls of Parliament," in six folio volumes, which consist of petitions for redress of grievances, notes on the replies, records of pleas held in the high court of Parliament, and other items, all belonging to the period 1278-1503. The journals of the House of Lords begin in 1509; those of the House of Commons, in 1547, although the records for the last twenty-two years of the reign of Elizabeth have been lost. In earlier times the journals were encumbered — although often enlivened — by accounts of striking episodes and by notes on important speeches. In the seventeenth century, however, the clerks were restrained from reporting the debates, and the journals nowadays consist only of formal records of "votes and proceedings," *i.e.*, of things done rather than things said. Reports and papers presented to the houses were from an early date included. But nowadays these are published separately and become part of the vast collection (some 7500) of parliamentary papers popularly known as "blue books."

From 1628, when the House of Commons forbade its clerks to take notes on speeches, to 1909, no records of parliamentary debates were kept except such as were based on notes taken more or less surreptitiously and published in defiance or evasion of parliamentary orders. After a notable contest on the subject in 1771, the debates were reported with some regularity. But only after 1834 was provision made for the accommodation of reporters, and until somewhat after that date the records were fragmentary and inaccurate. Meanwhile, various compilations partially supplied the lack of systematic reports. The first was the "Parliamentary History," published in 1751, and carrying the record down to the Restoration in 1660. This was superseded and continued by William Cobbett's "Parlia-

[1] On the conduct of business in the House of Lords see Anson, *Law and Custom of the Constitution*, I, 281–291.

mentary History," which came down to 1803. This, in turn, was succeeded by Cobbett's "Parliamentary Debates," published as a running supplement to the *Weekly Political Register*. In 1809 both the *Register* and the "Debates" passed into the hands of the well-known printing firm of T. C. Hansard. The "Debates," in successive series, under different forms of management, and for years after the Hansard family had ceased to have any interest in the publication, continued until 1908; and the long succession of portly volumes is known to all students of English parliamentary history as "Hansard." Until 1877, the publication was a purely private enterprise, but at that time the government, with a view to greater fullness and accuracy, began to subsidize it. It, however, remained unofficial; and only in 1909 was the decision reached to replace it by an official publication, prepared by a staff of reporters in each house who were not connected with any newspaper or commercial publisher. The records of each day's debates are now made up by these reporters, and are distributed in an unrevised form to members of the House of Commons by breakfast time of the succeeding day, although the more leisurely House of Lords does not permit its reports to be put into print until the members have had an opportunity to revise the proof sheets of their speeches.[1]

Relief of Parliamentary Congestion: Devolution. — Long before the Great War thoughtful Englishmen were concerned about the growing inability of Parliament to perform its labors either expeditiously or with proper deliberation, notwithstanding the frequent use of the closure in the lower house and the severe limits placed upon the time allowed for the consideration of private members' bills. A single legislature was called upon to make laws, control finance, scrutinize administration, and enforce executive responsibility, not only in the United Kingdom as a whole, but in each of the four constituent and partially separate areas, England, Wales, Scotland, and Ireland; and the steadily increasing intricacy of the conditions and problems with which this legislature had to deal augmented the task from decade to decade, and almost from year to year. The result was that matters deemed of sufficient importance to be given a leading place in the Speech from the Throne at the opening of a session frequently received no attention during the session; that a few exceptionally contentious bills absorbed

[1] Ilbert, *Parliament*, Chap. viii; Graham, *Mother of Parliaments*, Chap. xvi. On the published collections of the statutes of the realm see Ilbert, *Legislative Methods and Forms*, Chap. ii.

most of the time; and that measures were put on the statute book with scant attention from the membership as a whole, and often with no debate whatsoever. A writer in 1912 found that during the decade 1900–09 the House of Commons passed 388 Government bills; that 60 of these were finance bills; that the remaining 328 occupied 483 days, of which ten principal measures consumed 207 days; and that, accordingly, 318 bills were passed in 276 days. Again and again parliamentary and royal commissions have carried on extensive investigations and submitted painstaking reports, only to see their work become useless as a basis of legislation because of the inability of Parliament to get round to the subject until after the data had become obsolete.

The remedies that have been proposed are of two main sorts. The first is the revision of the rules under which the House of Commons (for the difficulty lies *there*, not in the upper chamber) carries on its work. Since 1832 some fifteen committees, exclusive of those having to do with private bill legislation, have been set up with a view to simplifying and expediting the proceedings of the House,[1] and many improvements have been made. The first parliament elected after the armistice in 1918 attacked the subject afresh and, as has been pointed out, extended the use of standing committees, regularized "kangaroo" closure, and in other ways shortened up the legislative process.[2] The problem, however, cannot be entirely solved in this way; at best, the obstacles to expeditious transaction of business are lessened or removed, while the volume of business to be transacted remains as before.

A second suggested remedy is, therefore, the withdrawal from Parliament altogether of certain great tasks for which it is at present responsible — in short, the adoption of some scheme of "devolution." There are two forms which devolution can be made to take, according as the principle is applied functionally or territorially. Functional devolution would be realized by setting up one or more separate national bodies charged with either preliminary or definitive control over certain specified subjects or classes of subjects. A good illustration is afforded by the proposal of the National Industrial Conference of 1919 that a permanent National Industrial Council should be created, consisting of two hundred representatives of employers and an

[1] See, in this connection, *Report of the Select Committee on House of Commons Procedure*, Cd. 378, 1914.

[2] See p. 170.

equal number of representatives of labor, and authorized to consider all questions of an industrial nature and submit its recommendations to Parliament, which would be expected to give them the form and sanction of law.[1] No arrangement of this kind has come about, and none is likely to do so — at all events, none resting on a basis of formal law.

Territorial, or regional, devolution is, however, a practical and much-discussed question. Obviously, decentralization, *i.e.*, the transfer of functions and duties from the government at London to the local authorities of the county and the borough, amounts to a devolution of power. Decentralization in this sense has, however, gone about as far as it is likely to go, and the trend is to-day rather in the direction of increased central supervision and control. The term devolution, as currently employed, denotes rather the idea of a segregation of governmental powers on the basis of the great historic areas from which the United Kingdom has been formed. Thus, Irish Home Rule, looking to a separate parliament for the lesser island, would mean the devolution of a large amount of legislation on purely Irish affairs; and, as will be noted later, the relief thus promised the Imperial Parliament has from the first formed one of the classic arguments of the Home Rulers. But it has also been proposed that a separate parliament should be set up in Scotland, perhaps another in Wales, and perhaps even another in England — all subordinate to, but separate from, the Imperial Parliament — in other words, that there should be "home rule all round." This, indeed, was the plan of Isaac Butt, the father of the Irish Home Rule movement; and the Home Rule bills of 1912 and 1919 were both put forward and defended by the Government of the day as parts of a general program of regional devolution.[2] It was computed in 1912 that 49.8 per cent of the public general acts of Parliament in the past twenty years pertained to one or another of the separate countries of the United Kingdom and that only 50.2 per cent related to the United Kingdom as a whole. There is much force in the contention that separate parliaments in the several constituent lands would enable the legislation for any particular country to be worked out with more deliberation than now, and in closer accord with the sentiments of the populations to be affected by it; and it goes without saying that the parliament at Westminster would be relieved of a large share of its present burden of local and regional legislation.

[1] R. Roberts, "England in Revolution," in *N. Y. Nation*, May 17, 1919.
[2] See pp. 290, 321.

There is already a considerable amount of administrative devolution; the Chief Secretary for Ireland and the Secretary for Scotland are the heads of great regional administrative systems which are to a degree autonomous.

Legislative devolution undeniably means a turning back of the pages of history, an abandonment of a legislative unity which was won with much difficulty. It might conceivably lead to pure federalism. On this account, as well as for other reasons, it encounters sturdy opposition from large and influential elements, especially in England. The necessity of easing the burden which Parliament now bears, joined with the demands of the several countries in their own interest, will, however, probably insure the triumph of the idea in some form. A non-partisan resolution calling upon the Government to appoint a parliamentary body of inquiry led to a general debate on the subject in the House of Commons in the summer of 1919, and influential men of all political faiths agreed that legislative devolution was only a question of time. The resolution was passed by a substantial majority, and a Speaker's Conference of thirty-three members (similar to the Speaker's Conference of 1916–17 on electoral reform) was set to work, with power to prepare a bill.

The Conference concluded its sittings in the spring of 1920 and submitted for Parliament's consideration two different schemes, one drawn up by Speaker Lowther and the other by a Liberal member, Mr. Murray Macdonald. The Speaker's plan looked to the experimental creation of subordinate legislatures for the three regional units of Great Britain: England, Wales, and Scotland should have separate divisional legislatures called "grand councils"; each legislature should consist of a Council of Commons and a Council of Peers; the Council of Commons should consist of the members of the Imperial House of Commons for the given division; the Council of Peers should consist of peers nominated by the Committee of Selection of the House of Lords; the grand councils should hold their sessions in the autumn, so as to avoid conflict with the sessions of the Imperial Parliament, and they should meet at Westminster or in any other place that they might select. The alternative plan of Mr. Macdonald differed from this chiefly in providing for the permanent establishment of separately elected subordinate parliaments; the parliament of each geographical division should consist of the same number of members as now represent the division in the Imperial Parliament, organized on a unicameral or bicameral basis as the Government should determine. Both

plans sought to distribute powers between the Imperial Parliament and the subordinate legislatures with a view to allocating to the latter all matters of purely English, Welsh, and Scottish concern. Ireland was left out of the schemes, on the assumption that its affairs would be adequately provided for by the pending Home Rule legislation. To the date of writing (June, 1920), the subject has received no farther consideration in Parliament. But it promises to demand much attention in future months and years.[1]

[1] Compare the "regionalist" movement in France, described below, pp. 481–483. It has even been proposed that England itself be divided into three provinces, with legislatures meeting at London, Winchester, and York. On various phases of the subject see A. V. Dicey, "Thoughts on the Parliament of Scotland," in *Quar. Rev.*, Apr., 1916; J. A. R. MacDonald, "Devolution or Destruction," in *Contemp. Rev.*, Aug., 1918; W. R. D. Adkins, "Home Rule for England," *ibid.*, Mar., 1920; Anon., "The Better Government of the United Kingdom," in *Round Table*, Sept., 1918; B. Williams [ed.], *Home Rule Problems* (London, 1911), Chap. x.

CHAPTER XII

LAW AND JUSTICE

Sources and Nature of the Law. — "Nothing," says a recent writer, "has contributed more to the stability of the British Empire, or the respect in which it is held, than the even-handed dispensing of justice which has distinguished its tribunals, from the highest to the lowest, for the last two hundred years."[1] The fundamental principle of the English political system may, indeed, be said to be the rule of law, which means, in effect, two things: first, that no man may be deprived of life, liberty, property, or any other fundamental "right" save on account of a breach of the law proved in court and, second, that no man stands above the law, and that for every violation of the law punishment may be inflicted or reparation obtained, whatever the station or character of the offender.[2] Upon these great guarantees a system of justice has been built up which lends the British nation one of its chief distinctions.

The importance of English law for the student of jurisprudence arises from three principal considerations. In the first place, it is, along with the Roman law, one of the two great bodies of law developed among western peoples in historical times. In the second place, it has spread over a very large part of the earth and has profoundly affected legal ideas and methods, even outside English-speaking lands.[3] Finally, the English system of jurisprudence and the English conceptions of law are essentially those which prevail in the United States, and hence are of peculiar interest for American students.

The English have always been inclined to take a very practical view of law. From at least the seventeenth century, they have uniformly conceived of it as being the rules, of whatsoever origin or nature, that the courts will recognize and enforce.[4]

[1] Jenks, *Government of the British Empire*, 246.

[2] The only exception to this general proposition is the sovereign, who may not be sued or prosecuted in the ordinary courts; but his immunity, as matters now stand, is of no practical importance.

[3] Bryce, "The Extension of Roman and English law," in *Studies in History and Jurisprudence*, 72–121.

[4] Lowell, *Government of England*, II, Chap. lxi.

Principles or practices which the courts will not enforce may be very influential as custom; but they are not law. Other important characteristics of English law are unity, antiquity, and continuity. Formed originally of two streams — the Saxon and the Norman-French — which flowed together after the Conquest, the law developed thenceforth to our own day with never a break; one can read one's way backward in the great textbooks and commentaries — Blackstone in the eighteenth century, Hale and Coke in the seventeenth, Fitzherbert in the sixteenth, Littleton in the fifteenth, Bracton in the thirteenth, and Glanvill in the twelfth — and find that one is always reading about the same great, although ever growing and expanding, body of law.

As the law has taken shape, it comprises two great elements, namely, statute law and common law. Statute law is "enacted" law. In earlier times it consisted mainly of royal legislation; in later centuries it has consisted, rather, of acts of Parliament, supplemented by by-laws, rules, and regulations made under parliamentary sanction by public officials and bodies. Inasmuch as it is constantly being amended and amplified, its bulk has come to be enormous. The more comprehensive and fundamental part of English law, however, is, and has always been, the common law. The common law is a product of custom rather than of legislation. It owes its existence to the operation of what the lawyers call *stare decisis* — the principle, namely, that a decision of a court shall set up a presumptive basis of action in all analogous cases subsequently arising, and especially when the same decision has been repeatedly made or affirmed over a long period of time. No definite date can be assigned for its beginning; but the great formative period was the twelfth to the fourteenth century, and, more particularly, the reigns of Henry II (1154–89) and his immediate successors. These were the times in which large control of local affairs was drawn into the hands of the king. On the judicial side, this meant a wide substitution of royal courts for feudal and other local tribunals. The judges who presided in these royal courts were sent out from the central government and formed a compact group with many opportunities for interchanges of opinion and with strong inducements to accept one another's judgments and follow common principles and procedure. On the basis of their reiterated and mutually respected decisions arose the common law, so called because it was universally applied wherever the king's courts were held — eventually, in every part of the land.[1] In sharp contrast was the

[1] F. Pollock, *Expansion of the Common Law* (London, 1904), 46–50.

situation in France, where law remained throughout the Middle Ages, and indeed until the Revolution, regional and not national, and therefore presented no such aspects of unity and coherence as English law offered from comparatively early centuries.[1] So vigorous did the English common law become that it successfully resisted the influence of Roman law in centuries when that great system was undergoing marked revival on the continent;[2] and this is a fact of prime importance in English constitutional development, because whereas the Roman law was grounded on the doctrine of the absolute authority of the prince, the common law recognized no such doctrine, but instead became the great bulwark of the parliamentary controversialists of the sixteenth and seventeenth centuries.[3]

Despite the increased legislative activity of modern times, it may still be said that the rules of the common law are fundamental, the laws of Parliament only incidental. Statutes simply *assume* the principles of the common law, and are largely, as one writer has put it, " the addenda and errata " of this law, incomplete and meaningless save in coördination with the legal order by which they are supported and enveloped.[4] Thus no act of Parliament enjoins in general terms that a man shall pay his debts, or fulfill his contracts, or pay damages for trespass or slander. Statutes define the *modes* by which these obligations shall be met, but the obligations themselves are derived from the common law. It is, however, a fixed rule that where statutes fall in conflict with the common law the statutes prevail. The limitless power of Parliament involves the right to set aside or to modify any common law principle or practice; on the other hand, no development of the common law can annul a parliamentary statute.

Statute law, of course, invariably takes written form. The

[1] See p. 448.

[2] On the influence of Roman law in England see F. Pollock and F. W. Maitland, *History of English Law to the Time of Edward I* (Cambridge, 1898), I, Chap. v; Bryce, *Studies in History and Jurisprudence*, 860–886; and C. P. Sherman, "The Romanization of English Law," in *Yale Law Jour.*, Feb., 1914.

[3] Dunning, *Political Theories from Luther to Montesquieu*, 197–200, 219–223; Gooch, *History of English Democratic Ideas in the Seventeenth Century*, Chaps. ii–iii.

[4] W. M. Geldart, *Elements of English Law* (London, 1912), 9. This author further remarks: "If all the statutes of the realm were repealed, we should have a system of law, though, it may be, an unworkable one; if we could imagine the common law swept away and the statute law preserved, we should have only disjointed rules torn from their context, and no provision at all for many of the most important relations of life." On the relation of common law and statutory law see also Ilbert, *Legislative Methods and Forms*, Chap. i. For a classical statement see Blackstone, *Commentaries*, I, 61–92.

acts of Parliament are to be found in imposing printed collections, to which a substantial volume is added every year.[1] Of the common law, however, there is no single or authoritative text. The common law grew up as unwritten law, and in the main it retains that character. None the less, the sources from which knowledge of it must be drawn are largely in writing or in print. The most important of them are (1) the decisions of the judges of the English courts (reported anonymously in Year Books from the reign of Edward I to that of Henry VIII, and thereafter by lawyers reporting under their own names), which, as early as the sixteenth century acquired weight as precedents and are nowadays practically decisive in analogous cases; (2) the decisions of courts of other countries in which a law derived from the English is administered, such decisions being, of course, not binding, yet highly influential; and (3) certain "books of authority" written by learned lawyers of earlier times, such as Coke's *Commentary on Littleton's Tenures* and Foster's eighteenth-century treatise on Crown Law. Some small branches of the common law have, indeed, been codified in the form of statutes, among them the law of partnership, that of sales, and that of bills of exchange.

The Rules of Equity. — One other body of English law requires mention, namely, the rules of equity. These rules had their origin in the administration of an extraordinary sort of justice by the king's chancellor — the "keeper of the king's conscience" — in medieval times, a practice which arose from the sheer necessity of redressing grievances flowing from errors or omissions on the part of the regular tribunals.[2] Interference by the chancellor, which started as a matter of special favor in unusual cases, gradually became an established practice, and, contrary to the original intention, a body of definite and separate rules of equity, founded largely on Roman legal principles, was permitted to develop, and likewise a court of chancery in which these rules were at all times enforceable. Reports of equity cases became continuous, and lawyers began to specialize in equity procedure. The rules of equity thus established partake largely of the nature of the common law, of which, indeed, they are, in effect, a supplement or appendix; and practically, although not theoretically, they prevail as against any provisions of the common law with which they are inconsistent. Their ultimate purpose is to afford

[1] Ilbert, *Legislative Methods and Forms*, 20–34.

[2] See p. 82. G. B. Adams, "The Origin of English Equity," in *Col. Law. Rev.*, Feb., 1916; *ibid.*, "The Continuity of English Equity," in *Yale Law Jour.*, May, 1917; W. S. Holdsworth, "The Early History of Equity," in *Mich. Law Rev.*, Feb., 1915.

means of safeguarding rights which exist in morals, but which the courts, acting under the common or statute law, cannot or will not protect. Until 1873 they were administered by tribunals separate from the ordinary courts. Nowadays they are not separately administered, but they none the less preserve their distinct character.[1]

The Judicial System. — The first fact to be observed about the machinery of justice is that no one system covers the whole of the United Kingdom. The Act of Union of 1707 guaranteed to Scotland her separate (and different) system of law and law courts; the Act of Union of 1800 extended to Ireland a similar favor. Irish jurisprudence has been largely assimilated to the English; the common law extends over the country, and the courts are modeled on those at Westminster, although with important differences. Scottish law, likewise, is not a native product; but it is modeled on the law of France, and, therefore, is based ultimately on the principles of the civil or Roman law. Since 1707 the criminal law has been gradually assimilated to the English system, and nowadays there is little difference between the two. Scottish civil law, however, is still very unlike the English; and the distinction between law and equity is practically unknown. Judicial organization is not on English lines; for example, the local tribunals of Scotland, *i.e.*, the sheriffs' courts, exercise both criminal and civil jurisdiction, whereas in England each kind of cases is handled in a separate set of courts.

[1] Two monumental works dealing with the earlier phases of English legal development are F. Pollock and F. W. Maitland, *History of English Law to the Time of Edward I*, 2 vols. (Cambridge, 1898), and W. S. Holdsworth, *History of English Law*, 3 vols. (London, 1903–09). The first volume of Holdsworth contains a history of English courts from the Norman Conquest to the present day; the other volumes deal exhaustively with the growth of the law itself. Other important books are: H. Brunner, *Sources of the Law of England*, trans. by W. Hastie (Edinburgh, 1888); R. K. Wilson, *History of Modern English Law* (London, 1875), O. W. Holmes, *The Common Law* (Boston, 1881); and A. V. Dicey, *Law and Public Opinion in England in the Nineteenth Century* (London, 1905). A good single-volume history of the law is E. Jenks, *Short History of the English Law* (Boston, 1912). Convenient introductions to both the history and the character of the law are W. M. Geldart, *Elements of English Law* (London and New York, 1912), and F. W. Maitland and F. C. Montague, *Sketch of English Legal History*, ed. by J. F. Colby (New York, 1915). Other excellent introductory treatises are Maitland, *Lectures on Equity* (Cambridge, 1909), and C. S. Kenny, *Outlines of Criminal Law* (New York, 1907). Maitland's article on English law in the *Encyclopædia Britannica* (11th ed.), IX, 600–607, is valuable for its brevity and clearness. On the English conception of law and the effects thereof see Lowell, *Government of England*, II, Chaps. lxi lxii. E. Jenks, "English Civil Law," in *Harvard Law Rev.*, Nov.–Dec., 1916, is an illuminating article. The character and forms of the statute law are authoritatively described in Ilbert, *Legislative Methods and Forms*, 1–76. The subject of judicial legislation is discussed lucidly in Dicey, *Law and Public Opinion in England*, Lect. xi.

A second fact is that the continental distinction between ordinary law and administrative law is not recognized in any part of the United Kingdom, and that, therefore, the system of ordinary courts is not paralleled, as it is in France, Italy, and Germany, by a set of administrative tribunals. Administrative law, as developed in the continental countries, is the body of rules governing the adjudication of disputes between administrative officers, when acting in their public capacity, and private citizens. The continental view is that questions of this character are so different from ordinary civil or criminal actions that they ought to be handled by special tribunals, and under a form of procedure at once more flexible and more effective than that prevailing in the ordinary courts; and in France, where the idea has been carried farthest, it is a general principle of law that no ordinary court shall pass upon the legality of any administrative act, whether the question arises in a suit against the official or in any other way.[1] A German scholar has pointed out that the Court of Star Chamber of the Tudor period went some distance toward developing such a system in England.[2] But the Long Parliament, at the middle of the seventeenth century, abolished this extraordinary tribunal, and others of its kind; and thenceforth administrative cases were invariably heard and decided by the ordinary courts, and upon the ordinary principles of law. Action may be brought against the state (nominally, against the king), with its consent, to obtain restitution of, or compensation for, private property held to have been taken unlawfully, or to be due under contract. Furthermore, every official, save only the king, may be sued for a tort, that is, on a charge of having by his acts inflicted injury on the plaintiff. If he can show that the acts in question were specifically authorized by law, or even that they fell within the range of discretion allowed him by law, neither the official nor the state is legally liable. If, on the other hand, it does not appear that there was due authority, the plaintiff is entitled to redress if the court awards it and the official is able to render it. Whether the act in question falls within the authority conferred by law is for the court to determine.[3]

[1] Lowell, *Government of England*, II, 497. See pp. 459–462 below.

[2] Gneist, *Englisches Verwaltungsrecht*, I, 389. See Maitland and Montague, *Sketch of English Legal History*, 116–120, and Carter, *History of English Legal Institutions*, Chap. xiv.

[3] This subject is surveyed comparatively in R. Bonnard, *De la responsibilité civile des personnes publiques et de leurs agents en Angleterre, aux États-Unis, et en Allemagne* (Paris, 1914).

A third fact is that the English judicial system, while still very complex, is more unified than that of the United States, and is, indeed, almost as highly integrated as that of France or Italy. This has been true only in comparatively recent times. A half century ago, there were many kinds of courts for a wide variety of purposes, and they had little or no organic relation one with another. There were civil courts and criminal courts, courts of equity and courts of common law, probate courts, divorce courts, ecclesiastical courts, and what not. This multiplicity of tribunals enormously complicated the work of judicial administration. Many cases arose in which it was difficult to determine which court had jurisdiction; each class of tribunals had its peculiar form of procedure, and even the trained lawyer found his way through the maze with difficulty.[1] When the situation had become almost intolerable, a great series of acts was at last put on the statute book — mainly during the years 1873–76 — which reconstructed the judicial system on simpler and more logical lines. Practically all of the courts except those of petty jurisdiction were brought together in a single, highly unified, and centralized system. Tribunals which had been separate, and at times more or less hostile, became branches or subdivisions of a single Supreme Court of Judicature; law and equity jurisdictions were combined in the same courts; the qualifications of the House of Lords for its judicial duties were improved by the addition of special "law lords"; the work of justice in all of its phases and branches was toned up and reintegrated.

Finally, all judges and judicial officers are appointed, nominally by the king, actually by the Lord High Chancellor (*e.g.*, the justices of the peace and the county court justices), or on his recommendation (*e.g.*, the puisne judges of the High Court). Popular election of judges, which prevailed in France for a short time in the era of the Revolution, and is common in the American states, never commended itself to the English mind. Tenure is for good behavior; and while removals can be made nominally by the Lord High Chancellor, acting in the name of the crown, in practice no removals take place except on the joint request of the two houses of Parliament. The custom which makes the "king's judges" thus removable only by legislative address helps give balance to the constitution, and the judiciary is noted for its impartiality and independence.

[1] Willoughby, *Government of Modern States*, 371.

Criminal Justice and Its Agencies.[1] — It would be wearisome to describe one by one the many offices and courts that now make up the English judicial system. The essential facts may better be brought out in another way, namely, by sketching the great processes by which criminal and civil justice is actually administered. For practical purposes, all cases that come before English courts of justice may be classed as either criminal or civil; and the arrangement of the courts, and their procedure, is largely based on this distinction. By criminal cases is meant those in which the king (that is to say, in these days, the *government*), acting in the double capacity of accuser and judge, "prosecutes" a person who is alleged to have committed an offense, such as murder, theft, or forgery, in order that the offender may be punished. The difficulty which would naturally arise from the double capacity of the king in such cases, if he acted in person, is got over by the fact that he has long ceased so to act, and that his duties in each capacity are now performed by totally distinct officials — by the law officers of the crown or other prosecutors on the one side, and by "His Majesty's judges" on the other.

When a man is accused of having committed an offense he is formally summoned, or arrested and brought, first of all, before the "magistrates," *i.e.*, one or more of the justices of the peace. The office of justice of the peace dates from the thirteenth century and has filled a large place in the development of administrative and judicial practice. The normal area of jurisdiction of the justices is the county, although there are also borough justices; and, aside from various persons who attain the office on an *ex-officio* basis, the justices in any given county are appointed, "at the pleasure of the crown," by the Lord High Chancellor, usually on recommendation of the lord lieutenant of the county, who himself is chief of the justices and keeper of the county records.[2] In many counties the list of justices contains three or four hundred names. But some of the appointees do not take the oath required to qualify them for magisterial service, and the actual work is performed in each county by a comparatively small number of persons. The justices serve without pay, but the office carries much local distinction, and appointments are

[1] This section and the succeeding one are based on the excellent account given in Jenks, *Government of the British Empire*, Chap. xi. It should be observed that the system described is that of England alone, although that of Ireland closely resembles it.

[2] Until 1906 a property qualification (ownership of land, or occupation of a house, worth £100 a year) was required of all save certain classes of appointees whose station was deemed a sufficient guarantee of fitness.

widely coveted. A large proportion of the appointees would be classed as country gentlemen.[1]

When the accused is brought before the justice of the peace the duty of the latter is, in the first place, merely to see whether there is a *prima facie* case against him. For this purpose, the magistrate hears the evidence, usually sworn testimony, of the prosecutor and his witnesses. There is no jury, and the accused need not make any statement or offer any defense unless he likes. If, after the hearing, the justice feels that no *prima facie* case has been made out, *i.e.*, that no jury would convict even if the prosecutor's evidence were unchallenged, he dismisses the charge, and the accused goes free. If, however, he thinks that a *prima facie* case has been established, he "commits the prisoner for trial," and decides whether to let him out on bail or to have him confined to await farther proceedings. If the privilege of bail is refused, the prisoner may apply, by a writ of *habeas corpus*, to a judge of the High Court for an order compelling it to be granted.

The court in which the trial will take place is determined mainly by the seriousness of the case. A large and increasing number of offenses, including petty assaults and thefts, small breaches of public order, and other minor misdemeanors — and even graver offenses if the accused wishes, or if it is a first charge, or if he is under age — are "punishable on summary conviction." The court of summary conviction is composed of at least two justices of the peace (usually resident in the immediate neighborhood), and is known as "petty sessions." The trial is public and without a jury, and the accused is given full opportunity to be heard and to introduce counsel. If the court finds the man guilty it imposes a fine or a limited period of imprisonment; but he may appeal to the "quarter sessions" of all the justices of the county, who will hear his case again from beginning to end.

In graver cases the accused is proceeded against by formal "indictment," or written statement accusing him of a definite crime committed in a particular way; and he is entitled to a copy of this indictment before his trial. An indictment case is tried either before quarter sessions or before a judge of the High Court "at assizes," in open court, usually in the county in which the offense is alleged to have been committed, and invariably by jury. Quarter sessions are so called because they are held four times a year. In the counties they comprise all the justices of the

[1] Medley, *Manual of English Constitutional History*, 302–400. An excellent monograph is C. A. Beard, "The Office of Justice of the Peace in England," in *Columbia Univ. Studies in Hist., Econ., and Pub. Law*, XX, No. 1 (New York, 1904).

peace for the county who care to take part; and all who sit are entitled to vote on the decisions. The assizes courts are held three times a year in all counties and four times in certain cities; and, as has been said, they are presided over normally by a judge of the High Court who goes out "on circuit" for the purpose. Wherever the trial takes place, the accused is entitled to have his fate decided by a jury of twelve of his countrymen, chosen at random by the sheriff from a list of householders compiled by the local authorities; and he has an almost unlimited right to "challenge," *i.e.*, to object to, the jurors selected. It is the business of the judge (or judges) throughout the trial to see that the rules of procedure and evidence are followed; and after counsel for both sides have completed the examination of witnesses and have addressed the jury, the presiding judge sums up the case and gives the jurors any instructions about the law that may be necessary to enable them to arrive at a verdict on the facts. If the jury finds the prisoner not guilty, he is discharged at once; and he can never be tried on the same accusation. If it finds him guilty, the judge pronounces the sentence provided by law; although, except in "capital" cases, he has considerable discretion within fixed limits. If the jury cannot agree, there may be a new trial, with a different set of jurors.

Formerly there was no appeal from the verdict of a jury in a criminal trial, although appeal lay to the House of Lords on points of law. An act of 1907, however, set up a Court of Criminal Appeal, consisting of not fewer than three judges of the King's (or Queen's) Bench; and a convicted person may now, as a matter of right, appeal to this tribunal on any question of law, and (with the permission of either the judge at the trial or the Court of Criminal Appeal itself) on any question of fact, *e.g.*, that the verdict of the jury was not justified by the evidence. If the appellate court thinks there has been a serious miscarriage of justice it can modify the sentence, or even quash the conviction altogether. There can be no farther appeal from the Court of Criminal Appeal, except to the House of Lords upon a point of law which one of the "law officers of the crown," the Attorney-General, certifies to be of public importance. Under no circumstances can the prosecutor appeal.[1]

Civil Proceedings. — A civil action is a proceeding brought by a private citizen, or by an official in his private capacity, to

[1] On criminal procedure see J. D. Lawson and E. R. Keedy, "Criminal Procedure in England," in *Amer. Jour. of Crim. Law and Criminology*, Nov., 1910, and Jan., 1911, and G. G. Alexander, *The Administration of Justice in Criminal Matters* (Cambridge, 1915).

obtain redress from another person, official or private, for a wrong—slander, trespass, breach of contract, infringement of patents, and the like—alleged to have been committed against the bringer of the action, or "plaintiff," by the person against whom the action is brought, or "defendant." In matters of this kind the function of the public authorities is merely to judge, *i.e.*, to determine the merits of the controversy. The parties may at any time agree to compromise and end the controversy out of court, as can never be done in criminal proceedings.

The court in which a civil action will be brought depends, in the first instance, on the amount of the claim. If it is less than £100, or if, in certain cases, the value of the property about which the dispute arises is not more than £500, the suit will probably be instituted in a county court. The county courts of the present day, established by act of 1846, replace, although they are not historically descended from, the ancient courts of the hundred and county. They are known as county courts, but in point of fact the area of their jurisdiction is a district which not only is smaller than the county but bears no relation to it. There are in England at present some five hundred of these districts, each with its own "court house," the object being to bring the agencies of justice close to the people and so to reduce the costs and delays incident to litigation. The volume of business to be transacted in a district is normally insufficient to occupy a judge during any large part of his working time, and the districts are grouped in some fifty circuits, to each of which is assigned by the Lord Chancellor one judge who holds court in each district of his circuit approximately once a month. The judges are paid (£1500 a year) out of the national treasury and hold office during good behavior. Procedure in the county court is simple, and frequently the case is conducted by the parties in person. Where the amount in dispute exceeds £5 either party may demand a jury (which for this purpose consists of eight persons); but this is rarely done. Where there is a jury it finds a verdict on the facts proved, under the direction of the judge; where there is none the judge decides on the facts and on the law, and in either case gives a judgment for the plaintiff or the defendant, which is enforced by seizure of the property of the party who fails to obey it, or even by imprisonment. The object of civil proceedings is, however, compensation, not punishment. There can be no appeal from the court's decision on a question of fact; but on a point of law appeal lies to a "divisional" sitting of the High Court of Justice, at which two judges

are present. In cases arising out of workmen's compensation and some other matters, appeals on questions of law may go to the Court of Appeal, and, ultimately, to the House of Lords.[1]

Where the plaintiff's claim exceeds the jurisdiction of the county court he must, and, even if it does not, he may, bring his action in the High Court of Justice. This High Court is the lower chamber of the Supreme Court of Judicature provided for in 1873 and set up in 1875.[2] It is organized in three "divisions" — Chancery, King's Bench, and Probate, Divorce, and Admiralty. In theory, any kind of civil action can be begun in any one of these divisions; and there is no limit to the importance of the actions that may be tried there. In practice, each division retains the kind of business it inherited from the tribunals out of which it was formed. The judges, whose number is variable, are appointed by the crown on nomination of the Lord Chancellor and hold office during good behavior. Under varying conditions, too complex to be stated here, they sit singly and in groups (although never as one body), at the capital and on circuit. There is no appeal on a question of fact from the judge (or jury, if there be one), although on various grounds, *e.g.*, that the verdict was unwarranted by the evidence, application for a new trial may be made to the Court of Appeal, which is the upper chamber of the above-mentioned Supreme Court of Judicature. Appeals on points of law go to this same tribunal. The Court of Appeal consists of the Lord Chancellor, three other high judicial personages sitting by *ex-officio* right, and six Lords Justices of Appeal specially appointed by the crown on recommendation of the Lord Chancellor; and while it is technically a single court it usually sits in two sections, each actually consisting of three of the specially appointed justices. The sittings are held at London; no witnesses are heard, and there is no jury; and the business, chiefly hearing appeals in civil cases from the High Court, is exclusively appellate; the decisions take the form of affirmation, reversal, or alteration of the judgment of the lower court.

The House of Lords and the Judicial Committee. — The dissatisfied litigant has still one more appeal, if he can stand the delay and expense, viz., to the House of Lords. Starting with control, through appeal, over the courts of common law in

[1] S. Rosenbaum, "Studies in English Civil Procedure: the County Courts," in *Pa. Law Rev.*, Feb., Mar., Apr., 1916; *Report of the Lord Chancellor's Committee on the County Courts*. Cd. 431. 1919.

[2] Maitland and Montague, *Sketch of English Legal History*, 164–170; Carter, *History of English Legal Institutions*, Chap. xviii; Holdsworth, *History of English Law*, I, Chap. viii.

England, this body in time acquired a similar supremacy in both civil and criminal actions over all British and Irish tribunals (and in civil, but not criminal, actions over all Scottish tribunals) except those of an ecclesiastical character. In 1873 it was proposed to abolish this control, and an act to that effect was passed. But, on the understanding that there would be an alteration of the composition of the chamber when sitting as a court of appeals, the measure was repealed before it took effect. Provision was thereupon made, in the Appellate Jurisdiction Act of 1876, for two (later three, four, and now six) salaried life peers to be selected from men of legal eminence, and to be known as Lords of Appeal in Ordinary. No judgment can be rendered on an appeal unless at least three "law lords" (these life members, together with all hereditary peers who hold, or have held, high judicial office [1]) have been present at the hearing of the arguments, and have taken part in the decision. Nominally, judicial business is transacted by the chamber as a whole, and every member has a right not only to be present but to participate in the decisions. Actually, it is transacted by the little group of law lords under the presidency of the Lord Chancellor; and the unwritten rule which prohibits the presence at judicial sessions of any persons save the law lords is quite as strictly observed as is any one of a score of other important conventions of the constitution. The law lords may sit and pronounce judgments in the name of the House at any time, regardless of whether Parliament is in session.[2] A sitting of the Court is, technically, a sitting of the House of Lords, and all actions are entered in the Journal as a part of the chamber's proceedings.[3]

A tribunal of great and growing importance, although, practically speaking, it does not hear appeals from British or Irish courts, is the Judicial Committee of the Privy Council. This committee was created in 1833 to take over jurisdiction (mainly, but not exclusively, civil) formerly exercised, in a rather loose manner, by the Council as a whole. The members include the Lord President of the Privy Council, the Lord Chancellor, the six Lords of Appeal in Ordinary, such additional members of

[1] See p. 143.

[2] When Parliament is in session the sittings of the law lords are held, as a rule, prior to the beginning of the regular sittings at 4:30 P.M.

[3] The judicial functions of Parliament are described at some length in Anson, *Law and Custom of the Constitution*, I, Chap. ix. The principal work on the subject is C. H. McIlwain, *The High Court of Parliament and its Supremacy* (New Haven, 1910). On the House of Lords as a court see MacDonagh, *Book of Parliament*, 300–309; A. T. Carter, *History of English Legal Institutions* (London, 1902), 96–109; and W. S. Holdsworth, *History of English Law*, I, 170–193.

the Council as hold (or have held) high judicial office, and not more than seven judges of the superior colonial courts, and two of the superior Indian courts, provided they are members of the Privy Council. The most active members are the six "law lords"; so that in its working personnel the Judicial Committee does not differ markedly from the House of Lords when sitting as a court. The Committee's function is to hear appeals from the ecclesiastical courts, from prize courts, from courts in the Channel Islands and the Isle of Man, from the courts of the colonies and dependencies, and from English courts established by treaty in foreign countries. Technically, the body is not a court, but only a committee of the King's Council to receive and hear petitions, and its findings take the form, not of court decisions, but recommendations to the crown to grant or refuse the petitions or appeals. These recommendations, however, have the practical effect of court decisions. Unlike the decisions of the House of Lords, they must represent a unanimous opinion of the judges (not under three) who have heard the case. Appeals come to the Committee from the four quarters of the earth and require for their proper consideration a knowledge of the most diverse systems of law. It must be conceded that the plan is not popular in the self-governing colonies. Two or three unsuccessful attempts to restrict it have been made in Canada. The constitution of Australia, as first drafted, provided that there should be no such appeals on constitutional questions except as sanctioned by the High Court of the Commonwealth, and that appeals on all other kinds of questions might be cut off by colonial legislation. The authorities at London objected, and the right of appeal (with, however, some important limitations) survives in the great southern dominion. Appeals from the courts of all of the self-governing colonies are, however, infrequent.[1]

[1] The Privy Council, in its general aspects, is described above (see p. 93). For general accounts of the English judicial system see Lowell, *Government of England*, II, Chaps. lix–lx; Jenks, *Government of the British Empire*, Chap. xi; Anson, *Law and Custom of the Constitution*, II, Pt. 1, 136–140, 147–150; Macy, *English Constitution*, Chap vii. As is stated elsewhere (p. 210), the first volume of Holdsworth's *History of English Law* contains an excellent history of the English courts. Perhaps the best brief account of the historical development of the judicial system is A. T. Carter, *History of English Legal Institutions* (4th ed., London, 1910). Mention may be made of Maitland, *Constitutional History of England*, 462–484, and Medley, *Manual of English Constitutional History*, 318–383. Two valuable works by continental writers are C. de Franqueville, *Le système judiciaire de la Grande-Bretagne* (Paris, 1898), and H. B. Gerland, *Die englische Gerichtsverfassung; eine systematische Darstellung*, 2 vols. (Leipzig, 1910). A large amount of precise information on the actual workings of the judicial system can be obtained from E. A. Parry, *The Law and the Poor* (New York, 1914). The author of this book was for twenty years an English county court judge.

CHAPTER XIII

LOCAL GOVERNMENT

Stages of Development. — An important — in some respects the most important — part of any system of government is the agencies and modes by which the authority of the state is brought close home to the people, and by which the people themselves, in their several communities, control their own interests and affairs — in a word, the machinery of local government and administration. The history of local institutions in England covers an enormous stretch of time, as well as a remarkable breadth of public organization and activity; and by no means its least striking phases are those that have appeared in comparatively recent years. Speaking broadly, it may be said to fall into five very unequal periods. The first, extending from the settlement of the Saxons to the Norman Conquest, was marked by the establishment of the distinctive English units of local political organization — shire, hundred, township, and parish — and by the fixing of the principle of popular local control. The second, extending from the Conquest to the fourteenth century, was characterized by a general increase of central control and a corresponding decrease of local autonomy.[1] The third, extending from the fourteenth century to the adoption of the Municipal Corporations Act of 1835, was preëminently a period of aristocratic management of local affairs, of government by the same squirearchy that prior to 1832, if not indeed 1867, was accustomed to dominate Parliament. The fourth, covering the years between the Municipal Corporations Act and the Local Government Act of 1888, was a period of democratic self-government in the boroughs, but of continued aristocratic domination in the rural areas. The last period, that from 1888 to the present, saw the democratization of rural local government, the farther simplification of the administrative system, and also a tendency toward increased central control.

The system as it operates to-day is less symmetrical, and less easy to describe, than that of France, Italy, and other conti-

[1] See p. 5.

nental states; it is considerably more complicated than that of most parts of the United States. But, as a result of the great reforms of the last two periods mentioned, it has an orderliness and simplicity that were altogether lacking fifty years ago. The variety of areas of administration has been lessened, the number of officials has been reduced and their relations have been made more clear, the guiding hand of central authorities in local affairs has been strengthened. Moreover, the local institutions of Scotland and Ireland, while formerly very different from those of England, have been brought into general conformity with English organization and usage.

Local Government before 1832. — The transformation wrought in the old, aristocratic, and complicated plan of local government paralleled, and was profoundly affected by, the democratization of Parliament during the last three quarters of the nineteenth century. Two periods of change are especially noteworthy, the one following closely the Reform Act of 1832 and culminating in the adoption of the Municipal Corporations Act of 1835, the other following similarly the Representation of the People Act of 1884 and attaining fruition in the Local Government Act of 1888 and the District and Parish Councils Act of 1894.

At the opening of the century rural administration was carried on principally in the shire, or county, and the civil, or "poor-law," parish; urban administration in the corporate towns, or municipal boroughs. The counties were fifty-two in number. Most of them were of Saxon origin, although some were the product of administrative reorganizations of later centuries. The last to be created were those of Wales. From Saxon times to the fourteenth century the dominating figure in county administration was the sheriff. But in the reign of Edward III justices of the peace were created, into whose hands, during the ensuing five hundred years, substantially all administrative and judicial affairs of the county were drawn. These justices were appointed by the crown, chiefly from the ranks of the smaller landowners and rural clergy. The people of the county had no effective control over them; and, being men of more or less aristocratic temper, the officials strongly tended to become a petty oligarchy, whose management of local affairs was inspired mainly by a desire to promote the interests of their class.

The principal division of the county was the civil parish, usually, but not always, identical with the ecclesiastical parish, and derived from the ancient township, or agricultural settlement of small peasant farmers, self-supporting, coöperative, and

isolated in the midst of its open fields. The governing bodies of the parish were two — the vestry (either open to all ratepayers or composed of elected representatives), which had general powers of administration, and the overseers of the poor, who, under the Elizabethan statute of 1601, were empowered to find employment for the able-bodied poor, to provide other forms of relief as should be required, and to levy a local rate to meet the costs of their work. Since 1782, however, the parishes had been arranged in groups for poor-law purposes, and boards of guardians appointed for these larger poor-law areas by the justices of the peace had come to be the real authorities in the administration of poor relief, as well as in most other matters.[1] The abuses arising from poor-law administration were frequently appalling.

The corporate towns in England and Wales numbered, in 1832, 246. They comprised population centers which, on the basis of charters granted by the crown, had become distinct areas of local government. They did not, however, stand entirely apart from the county and parish organizations; except in so far as they were specifically exempted by the terms of their charters, they were subject to the authority of the justices of the peace and of the governing agencies of the parishes within whose jurisdiction they lay. Their form of government was determined mainly by the provisions of their charters, and since these instruments were drawn on no fixed principles, uniformity of organization was entirely lacking. As a rule, however, the borough was a close corporation, and the burgesses, or "freemen," in whom were vested peculiar trading and fiscal rights, together with an absolute monopoly of the powers of government, formed only a small fraction of the general body of residents. The governing authority of the borough was a council, whose members were either elected by the freemen or recruited by coöptation. Government was almost always oligarchical and irresponsible; usually it was inefficient, and frequently it was corrupt.

The Municipal Corporations Act (1835). — The Revolutionary and Napoleonic period brought changes which liberalized and strengthened local government — especially municipal government — in France, Prussia, and other continental countries. But in England the old system remained as firmly in-

[1] "Poor relief," it has been aptly remarked, "is really the historical basis of modern local government in England." Jenks, *Government of the British Empire*, 308.

trenched as ever. There was considerable demand for reform; and in many of those towns that were most affected by the industrial revolution the "corporations" proved totally incapable of handling the new problems of administration, so that Parliament was obliged to create or authorize special commissions and boards to make provision for water supply, sewerage, public lighting, and other necessary services.[1] But, like every other sort of reform, the reconstruction of local government on democratic lines was held back by the reaction produced in England by the continental upheaval; and when at length the nation was sufficiently recovered from its fright to turn its thought once more to political reorganization, the question of local government reform was compelled to await the culmination of the more important and more absorbing agitation for the reform of Parliament.

The Reform Act of 1832 at once cleared the way for, and gave a mighty impetus to, the regeneration of local government. The first reformed parliament lost no time in turning attention to the subject. In 1833 it passed an act reorganizing borough government in Scotland, and late in the same year it caused a royal commission to be appointed to make a study of borough government in England and Wales. In 1834 it passed a Poor Law Amendment Act, which abolished outdoor relief for the able-bodied, provided for the regrouping of the parishes in poor-law unions, placed the administration of relief in those unions in the hands of boards of guardians composed in part of justices of the peace and in part of members specially elected by the ratepayers, and established a national Poor Law Commission for purposes of general supervision. After a thorough investigation, which brought to light astounding failures and irregularities in the administration of municipal affairs, the royal commission of 1833 presented its report.[2] Evidence of the need of action was overpowering, and a bill brought in by Lord John Russell encountered only perfunctory opposition in the House of Commons. The House of Lords sought to stay the course of change, but succeeded only in forcing certain amendments, and in the autumn of 1835 the measure took its place on the statute book as the Municipal Corporations Act.

The new law applied to one hundred and seventy-eight

[1] W. B. Munro, *Government of European Cities* (New York, 1909), 213.

[2] This report was published in April, 1835, in five volumes. The first volume contains the report proper; the other four present the evidence on which it was based. In 1837 a separate report was submitted, dealing with the government of London.

boroughs in England and Wales. Many minor municipalities, including about seventy of the preëxisting boroughs, were not covered; and London was left to be dealt with by separate legislation.[1] But the legal status, the powers, and the form of government of all boroughs to which the measure applied were made uniform; and the conditions under which new municipal charters should be granted were duly prescribed. The corporation was henceforth to be " the legal personification of the local community, elected by, acting for, and responsible to the inhabitants "; and the governing organ was to be a council composed of members chosen for a three-year term by the equal and direct votes of all the local taxpayers. The sphere of municipal administration was defined, and fresh powers to raise and spend money, to dispose of municipal property, and to make ordinances were conferred.

With the adoption of this important measure local government reform came to a halt, leaving the widely assailed system of county government intact. The abuses of the old order were, if not greater, at all events more glaring in the towns than in the counties; besides, the most determined opponents of change were the aristocratic landholders. Hence it was natural that, just as parliamentary elections were democratized first in the towns, the reform of local government should proceed faster in the urban than in the rural communities. In point of fact, successive amending statutes paved the way for the great Municipal Corporations Consolidation Act of 1882, which put English municipal government on substantially its present basis, before any noteworthy changes whatsoever in county government had taken place.[2]

Mid-Century Confusion of Areas and Jurisdictions. — Throughout the earlier and middle Victorian period legislation relating to local government was voluminous, but most of it was special rather than general. It pertained principally to the care of highways and burial grounds, the establishment and organization of districts for the promotion of sanitation, the creation of

[1] See p. 236.

[2] The history of English local institutions to 1835 is dealt with in detail in H. A. Merewether and A. J. Stephens, *History of the Boroughs and Municipal Corporations of the United Kingdom*, 3 vols. (London, 1835), and in S. and B. Webb, *English Local Government from the Revolution to the Municipal Corporations Act*, 3 vols. (London and New York, 1904–08). The first of these works was written to promote the cause of municipal reform, but is temperate and reliable. The second is especially exhaustive, volume iii containing probably the best existing treatment of the history of borough government. For a brief account see May and Holland, *Constitutional History of England*, II, Chap. xv.

"improvement act" districts, and, notably, the erection and administration of school districts under the Forster Education Act of 1870. With each successive measure the confusion of jurisdictions and agencies increased. The prevailing policy was to provide for each fresh need as it arose by creating special machinery to meet that particular need, and the arrangements made were seldom or never uniform throughout the country, nor did they bear any logical relation to arrangements already existing for other purposes. By 1871 the country, as Lowell puts it, was divided into counties, unions, and parishes, and spotted over with boroughs and with highway, burial, sanitary, improvement act, school, and other districts, and of these areas none save the parishes and unions bore any necessary relation to any of the rest.[1] In the effort to adapt the administrative system to the fast changing conditions of a rapidly growing population, Parliament piled act upon act, the result being a sheer jungle of interlacing jurisdictions, baffling to the student and fatal to orderly and economical administration. It is computed that in 1883 there were in England and Wales no fewer than 27,069 independent local authorities,[2] and that the ratepayer was liable for eighteen different kinds of taxes.

The Local Government Act (1888) and the District and Parish Councils Act (1894). — The Education Act of 1870 may be said to have marked the end of the sheer multiplication of local government jurisdictions. Already the need of simplification and consolidation was widely recognized. In 1871 the Poor Law Board (which superseded the Poor Law Commission in 1847) was converted into the Local Government Board, with the purpose of concentrating in a single department the supervision of the laws relating to public health, the relief of the poor, and local government; and when, in 1872, the entire country was divided into urban and rural sanitary districts, the work was done in such a way as to involve the least possible addition to the existing complexities of the administrative system.[3] The two measures, however, which, in the main, brought order out of

[1] *Government of England*, II, 135.

[2] These included the 52 counties, the 239 municipal boroughs, the 70 improvement-act districts, the 1006 urban sanitary districts, the 577 rural sanitary districts, the 2051 school-board districts, the 424 highway districts, the 853 burial-board districts, the 649 poor-law unions, the 14,946 poor-law parishes, the 5064 highway parishes not included in urban or highway districts, and the 1300 ecclesiastical parishes. For the situation in 1888 see G. L. Gomme, *Lectures on the Principles of Local Government* (London, 1897), 12–13.

[3] The arrangements made at this time were continued in the great Public Health Act of 1875. Lowell, *Government of England*, II, 137.

confusion were the Local Government Act of 1888 and the District and Parish Councils Act of 1894. The first of these, commonly referred to as the County Councils Act, was the sequel of the Municipal Corporations Act of 1882 and the Representation of the People Act of 1884, being designed to apply the principles of the reformed borough system to county government, and at the same time to invest the newly enfranchised rural population with a larger control of county affairs. The act created sixty-two administrative counties (some being coterminous with the preëxisting historic counties, others being subdivisions of them), and sixty-one "county boroughs," which were towns of more than 50,000 inhabitants.[1] In each county and county borough was set up a council, whose members were mainly (at least two thirds of them) elective, and to this council were transferred the administrative functions of the justices of the peace, leaving to these survivors of the old régime little authority save of a judicial character.

The democratization of rural government thus begun by the Conservative ministry of Lord Salisbury in 1888 was carried to completion by the District and Parish Councils Act, sponsored by the Liberal ministries of Gladstone and Rosebery in 1894.[2] This measure provided (1) that every county should be divided into districts, urban and rural, and every district into parishes, and (2) that in every district, and in every rural parish with more than three hundred inhabitants, there should be an elected council, while in the smallest parishes there should be a primary assembly composed of all persons whose names appeared on the local government and parliamentary register. To the parish councils and assemblies were transferred all of the civil functions of the vestries, leaving to those bodies the control of ecclesiastical matters only; while to the district councils, whether rural or urban, were committed control of sanitary affairs and highways.

The effect of the acts of 1888 and 1894 was twofold. In the first place, they put the local affairs of the rural portions of the country in the hands of popularly elected bodies. In the second place, their adoption afforded opportunity for the immediate or gradual abolition of all local governing authorities except the county, municipal, district, and parish councils, the boards of guardians, and the school boards, and thus they contributed

[1] The number of county boroughs was gradually raised until in 1919 it was eighty-two. See p. 233.

[2] It should be observed that the original intent in 1888 was to deal with district as well as county organization. As finally passed, the law of that year had to do only, however, with the counties.

vastly to that gradual simplification of the local governing system which is one of the most satisfactory developments of recent years. The act of 1894 alone abolished some 8000 authorities. Since that date the consolidation of authorities and the elimination of areas have been carried considerably farther, the most notable step being the abolition of the school districts by the Education Act of 1902 and the transfer of the functions of the school boards to the councils of the counties, boroughs, and districts. Both majority and minority reports submitted by the Poor Law Commission in 1909 recommended the abolition of the poor-law union, although action was not taken on the subject.[1]

Local Government To-day: Central Control. — The system of local government as it operates at the present time is by no means free from anomalies. It presents, none the less, an orderliness and simplicity altogether lacking a few decades ago. The variety of areas of administration has been lessened, the number of officials has been reduced and their relations have been simplified, the guiding hand of the central authorities in local affairs has been strengthened. Stated briefly, the situation is as follows: the entire kingdom is divided into counties and county boroughs; the counties are subdivided into districts, rural and urban, and boroughs; these are subdivided further into parishes, which are regrouped in poor-law unions; while the city of London is organized after a fashion of its own. In order to make clear the essentials of the system, it will suffice to allude briefly to the connection between the local and central administrative agencies, and to point out the important features of each of the principal governmental units named.

In most stages of its history English local government has been carried on with a smaller amount of interference and of direction on the part of the central authorities than have the local governments of the various continental states. Even to-day the general government is not present in county or borough in any such sense as that in which the French government, in the person of the prefect, is present in the department, or the Prussian, through the agency of the "administration," is present in the *Regierungsbezirk*, or district. A noteworthy aspect of English administrative reform during the past three quarters

[1] See p. 232. The history of local government changes since 1870 is told more fully in May and Holland, *Constitutional History of England*, III, Chap. v. The complexity that still exists is emphasized in L. Gomme, "The Chaos of Local Government," in *Contemp. Rev.*, Mar., 1913.

of a century has been, nevertheless, a large increase of centralized control, if not of technical centralization, in relation to poor relief, education, finance, health, and the other varied functions of the local governing bodies. There are to-day five ministerial departments which exercise, in greater or lesser measure, this kind of control. One, the Home Office, has special surveillance of police and of factory inspection. A second, the Board of Education, directs and supervises all educational agencies which are aided by public funds. A third, the Board of Agriculture, supervises the enforcement of laws relating to markets and to diseases of animals. A fourth, the Board of Trade, investigates and approves enterprises relating to the supply of water, gas, and electricity, and to other forms of "municipal trading." The fifth, and most important of all, was, until 1919, the Local Government Board, which managed the execution of the poor laws and the activities of the local health authorities, supervised the financial operations of the local bodies, and discharged other regulative and supervisory functions too extensive to be enumerated. As has been explained, the statute of 1919 which created the Ministry of Health, abolished the Local Government Board, or — to speak more accurately — absorbed its functions in those of the new department. The fifth central regulating department is now, therefore, the Ministry of Health, which, until certain contemplated readjustments are made, will exercise the functions, in general, of the former Board, in addition to a highly specialized control of everything that relates to local health matters.[1] The powers of these departments over local affairs are exercised in a number of ways, but chiefly through orders and regulations, assent to or disallowance of measures passed or proposed by the local bodies, and expert advice and guidance. It need hardly be added that the powers and functions of the local authorities are subject at all times to control by parliamentary legislation.[2]

Areas of Rural Local Government: the County. — Since the Local Government Act of 1888 was passed, there have been two kinds of counties in England. There are, in the first place, the

[1] See p. 87.

[2] On the relations between the central and local agencies of government see Lowell, *Government of England*, II, Chap. xlvi; P. Ashley, *Local and Central Government* (London, 1906), Chap. i; J. Redlich and F. W. Hirst, *Local Government in England* (London, 1903), II, Pt. vi; M. R. Maltbie, *English Local Government of To-day; a Study of the Relations of Central and Local Government* (New York, 1897); and G. T. Reid, *Origin and Development of Public Administration in England* (London, 1913). The tendency to centralization is studied in J. Raiga, *Mouvement de centralisation administrative et financière en Angleterre* (Paris, 1913).

historic counties, fifty-two in number, which survive as areas for parliamentary elections, the organization of the militia, and the administration of justice. Their officials — the lord lieutenant, the sheriff,[1] and the justices of the peace — are appointed, directly or indirectly, by the crown. Much more important, however, are the administrative counties, now sixty-two in number, created and regulated by the local government legislation of 1888 and 1894. Six of these administrative counties coincide geographically with ancient counties, while most of the remaining ones represent no wide variation from the historic areas upon which they are based. They do not include the eighty-two county boroughs which are situated within them,[2] but they do include all non-county boroughs and all urban districts, so that they are by no means altogether rural. They are extremely unequal in size and population, the smallest being Rutland with 19,709 inhabitants and the largest Lancashire with 1,827,436.

The governing authority of each administrative county is the county council, a body composed of (1) councilors elected for a term of three years in single-member electoral divisions, under very liberal suffrage arrangements applying to both men and women,[3] and (2) aldermen chosen for six years by these popularly elected councilors, either from their own number or from outside.[4] The aldermen are one third as numerous as the other

[1] The office of sheriff ("shire-reeve") antedates the Norman Conquest. By the twelfth century the sheriff, as the principal local representative of the crown, had become a great military, financial, and judicial personage, with a strong tendency to make his power hereditary. Step by step his authority was pared down, until nowadays the office, while picturesque and not devoid of a certain amount of responsibility, is of little practical importance. The principal duties that now devolve upon the sheriff are (1) to act as the returning officer for the county at parliamentary elections, (2) to receive and attend the king's judges on circuit, (3) to summon juries, and (4) to execute the judgments, criminal and civil, of the courts of justice. Most of these duties, except the purely ceremonial ones, are performed by deputy. The tenure is one year, and the office is unpaid. "The whole history of English justice and police," comments Maitland, "might be brought under this rubric, the decline and fall of the sheriff." (*Justice and Police*, 69.) See Wilson, *The State* (ed. of 1918), 225–226.

[2] For a list of the county boroughs see *Statesman's Year Book*, 1919, pp. 16–18.

[3] The local government electorate was greatly broadened by the Representation of the People Act of 1918. In England, Wales, and Ireland it includes all men and women twenty-one years of age and upwards and not subject to any legal incapacity, who are jointly or severally occupiers as owners or tenants of any land or premises in a local government area, if they have so occupied for six months ending January 15 or July 15. Furthermore, the wife of every local government elector is a voter if she is thirty years old, irrespective of whether she is an occupier. The arrangements in Scotland are different, and somewhat less liberal.

[4] If a councilor is made an alderman his seat as an ordinary councilor becomes vacant and is filled again at a special election.

councilors, and half of them retire triennially. There is no distinction of power or function between the two classes of members. In the choice of councilors party feeling seldom displays itself, and elections are often uncontested. Members are drawn mainly from the landowners, large farmers, and professional men, although representatives of the lower middle and laboring classes are now more frequently appearing. The councils vary greatly in size, but the average membership is approximately seventy-five. It is not easy to bring together so many men at brief intervals, and the bodies do not assemble as a rule oftener than the four times a year required by law. The mass of business devolving upon them is transacted largely through committees. Of these, some — as the committees on finance, education, and asylums — are required by law; others are established as occasion arises. The continuous work of administration is performed by a group of officials — the clerk, the chief constable, the treasurer, the surveyor, the public analyst (chemist), and others — chosen in most instances by the council and having substantial permanence of tenure.

The powers and duties of the council are many and varied. In the act of 1888 — which transferred the administrative and financial powers of the justices of the peace to the new body, leaving to the justices only their judicial functions — they are enumerated in sixteen categories, of which the most important are the raising, expending, and borrowing of money; the care of county property, buildings, bridges, lunatic asylums, reformatory and industrial schools; the appointment of inferior administrative officials; the granting of certain licenses other than for the sale of liquor;[1] the care of main highways and the protection of streams from pollution; and the enforcement of various regulations relating to animals, fish, birds, and insects. The Education Act of 1902 made the council also the school authority throughout the county, except in the urban sections. It must see that adequate provision is made for elementary schools, and it may assist in the maintenance of agencies of education of higher grades. The control of police within the county rests with a joint committee representing the council and the justices of the peace. Finally, the council may make by-laws for the county, supervise the minor rural authorities, and perfom the work of these authorities when they prove remiss.[2]

[1] Liquor licenses are granted by the justices of the peace.

[2] Lowell, *Government of England*, II, 274–275. See W. Anderson, "How England has Solved some Familiar County Problems," in *Nat. Munic. Rev.*, July, 1918.

Other Areas of Rural Local Government. — The administrative county contains four kinds of local government areas — rural districts, rural parishes, urban districts, and municipal boroughs. Of rural districts there are, in England and Wales, 672. They are coterminous, as a rule, with rural poor-law unions, or with the rural portions of unions which are both rural and urban; but they cannot comprise parts of more than one county. The governing authority of the district is a council, composed of persons (women being eligible) chosen, in most instances triennially, by the rural parishes in proportion to population. As a rule, one third retire each year. The council meets at least once a month, and is chiefly responsible for the enforcement of public health acts and for the care of highways which are not classed as "main roads." To meet in part the costs of this administration, it is empowered to levy district rates, or taxes. The principal salaried and permanent officials of the district, chosen by the council, are a clerk, a treasurer, a medical officer, a surveyor, and a corps of sanitary inspectors.

Of parishes there are two types, the rural and the urban, and their aggregate number in England and Wales is approximately 15,000. The urban parishes have no administrative importance, and farther mention need not be made of them.[1] Under the act of 1894 the rural parish, however, has been revived from the inert condition into which it had fallen, and to-day it fills an appreciable, if humble, place in the rural administrative system. Its organization is dependent to a degree upon its population. But in every parish there is "a parish meeting" in which all persons on the local government and parliamentary registers (including women) have a right to participate. What this meeting — which is, of course, a primary assembly, and not a representative body — does depends upon whether the parish has or has not a council. Parishes having a population of three hundred or more must have councils, and others may now do so (with the consent of the county council) if they desire. The council is composed of from five to fifteen members (women being eligible), elected as a rule for a term of three years. If there is a council, the parish meeting has little to do except choose the councilors and criticize their work. In this case it meets but once a year. But if there is no council, the meeting elects a group of overseers to represent it in carrying on the routine work; and in this case it meets twice a year. Whatever the organization, the powers of the parish authorities make an extended, if not imposing, list.

[1] But see Jenks, *Government of the British Empire*, 312.

They include the management of civil parochial property, the provision of fire protection, the inspection of local sanitation, the maintenance of footpaths, and the appointment of trustees of civil charities within the parish. The meagerness of the population of large numbers of the parishes, however, together with the severe limitations imposed both by law and by practical conditions upon rate-levying powers, usually prevents the authorities from undertaking many or large projects.

For the administration of poor relief there have existed since 1782 poor-law unions, consisting of parishes grouped together, usually without much effort to obtain equality of size or population. The districts, rural and urban, created in 1894 are, in general, coterminous with these unions; and in the rural district the old "board of guardians" is merged in the district council, although in the urban district the board and the council are separate bodies. The unions, however, often contain both rural and urban parishes, and in cases of this kind poor-law administration is vested in a board of guardians composed of the persons elected as district councilors in the rural parishes of the union, together with other persons who are specially elected as guardians in the urban parishes and have no other function. The conditions under which poor relief is administered are minutely prescribed in regulations laid down by the Local Government Board (superseded in 1919 by the Ministry of Health) at London, so that, save in the matter of levying rates, the range of discretion left to the boards of guardians is very narrow.[1]

Areas of Urban Local Government: the Urban District and the Borough. — Aside from London, which has a complicated system of government peculiar to itself, the urban portions of the country are organized under three chief forms, *i.e.*, the urban district, the municipal borough, and the county borough. Little need be said about the urban district. It comprises simply a section of a county which presumably has a somewhat dense population, and is on the road to becoming a borough, and in the meantime is given a government adapted to its peculiar needs. Its organization hardly differs from that of the rural district; it has a council, elected for three years and meeting regularly once a month; and its work — chiefly the control of sanitation and highways — is carried on by committees, assisted by permanent salaried officials whom the council elects.

The standard municipal unit is, rather, the borough, which

[1] Ashley, *Local and Central Government*, 52–60; F. A. Ogg, *Social Progress in Contemporary Europe* (New York, 1912), Chap. xvi.

differs from the urban district mainly in having a charter granted by the crown, and in being vested with numerous powers belonging to no inferior urban area. The distinction between municipal boroughs and county boroughs need not detain us. All boroughs are, of course, properly speaking, municipal; all have substantially the same organization. The county boroughs — eighty-two in number in 1919 — are simply those that have been withdrawn from the jurisdiction of the administrative counties in which they lie, and have themselves been endowed with the powers of counties; under the Local Government Act of 1888 boroughs are so withdrawn when they attain a population of fifty thousand.[1] Ordinary municipal boroughs are those that still form parts politically, as well as geographically, of the counties in which they are situated.[2]

The Municipal Corporations Act of 1835, which put municipal government in England upon its present basis, was immediately applied to 178 boroughs in England and Wales; and the number covered has been increased, as new boroughs have been created, to upwards of four hundred. Every borough has a charter, which creates a corporation (consisting of the "mayor, aldermen, and burgesses"), and, in conformity with the Municipal Corporations Consolidation Act of 1882, prescribes a form of government and defines a body of powers similar to, although not in all details identical with, those possessed by other boroughs. Charters were formerly issued, on petition of the inhabitants, by the Local Government Board, acting in the name of the crown. At present, the function has devolved, although probably only temporarily, upon the Board's legatee, the Ministry of Health. If a petition raises controversy, the final decision is likely to be made by Parliament.

Borough government is constructed on the characteristic English plan of gathering substantially all authority into the

[1] There are actually, however, several boroughs with greater population which have not been made county boroughs.

[2] It is to be observed that the term "city" has a technical meaning in England, and, in strict accuracy, should not be used interchangeably with "borough." The term once denoted a place which was, or had been, the seat of a bishop. Nowadays it is applied also to places, as Sheffield and Leeds, upon which the title has been bestowed by royal patent. Save, however, in the case of the "city" of London (see p. 236), where alone in England ancient municipal institutions have been generally preserved, the term has no present political significance. The governments of the cities are identical with those of the non-city boroughs. It is to be observed, further, that whereas formerly boroughs as organized for municipal purposes invariably coincided with the boroughs as constituted for purposes of representation in Parliament, there is now no necessary connection between the two. An addition to a municipal borough does not alter the parliamentary constituency.

hands of a single elected body, a council; the doctrine of separation of executive and legislative powers finds no more acceptance in municipal than in county and other local organization. The borough council consists of councilors, aldermen, and a mayor, sitting as one body. The councilors, varying in number from nine to more than a hundred, are elected by practically the entire adult population, male and female, for terms of three years, one third retiring annually. In small boroughs they are usually elected on a general ticket, in large ones by districts or wards. Since 1907 women have been eligible, and many have been elected. The aldermen, to the number of one third of the councilors, are chosen by the council for six years, one half retiring triennially. They may be taken from outside the council, but most of them are selected from the more experienced councilors, making it necessary to hold "by-elections" to fill the vacancies. Legally the aldermen differ from the ordinary councilors only in the manner of their election and the length of their term. Being, however, as a rule more experienced, they are likely to hold the principal committee chairmanships and to have exceptional influence in the shaping of policies. The system makes it possible, also, to draw into the council men of high qualifications who would not seek election, or be likely to be elected, by the people at large.

The mayor is elected for one year by the council, either from its own membership or from outside. He is not the head of a separate branch of government, as is the mayor of an American city, but merely the presiding officer of the council and the official representative of the borough on state occasions. He cannot appoint or remove officers, control the departments, or veto ordinances. Hence he need not be a man of executive ability or experience. As matters go, it is far more important that he be a person of some wealth, and of leisure; for the chief demands upon him will be of a social and philanthropic nature, and a salary is rarely provided. If he is willing, he is likely to be reëlected a number of times. Reëlections of councilors and aldermen are also numerous, resulting in a continuity of service and an accumulation of experience quite unknown to the American city council, where the doctrine of rotation in office still rules.

The council meets in the town hall monthly, fortnightly, or weekly, according as the amount of business demands. The larger part of its work, however, is transacted through committees, which are elected by the council, and presided over by

chairmen whom the committees themselves choose. Under national law there must be a "watch," *i.e.*, police, committee, and a committee on education. Other committees are created at the council's discretion, and the number varies from six or seven in small boroughs to twenty or twenty-five in large ones. Practically all matters brought up in the council are referred to some committee; and since they are there considered in all due detail, and normally by the councilors who are best informed on the subject in hand, committee recommendations are almost certain to be adopted.

The council comprises, in the fullest sense, the government of the borough; hence it exercises substantially all of the powers (save that of electing the councilors themselves) that come to the borough from the common law, from general and special acts of Parliament, and from provisional orders. These powers fall into three main classes: legislative, financial, and administrative. The council makes by-laws, or ordinances, relating to all sorts of matters — streets, police, health, traffic control, etc. — subject only to the power of the Ministry of Health to disallow ordinances on health and a few other subjects if that authority finds them objectionable. It acts as custodian of the "borough fund" (consisting of receipts from public property, franchises, fines, fees, etc.); levies "borough rates" of so many shillings or pence per pound on the rental value of real property, in order to obtain whatever additional revenue is needed; draws up and adopts the annual budget; makes all appropriations; and borrows money on the credit of the municipality in so far as the central authorities permit. Finally, it exercises control over all branches of strictly municipal administration. This it does, first, by appointing, on a non-partisan basis, the staff of permanent salaried officials — clerk, treasurer, engineer, public analyst, chief constable, medical officer, etc. — who carry on the daily work of the borough government, and, second, by constant supervision of these officials and their subordinates, exercised through the committees having to do with the various branches of business. Thus the education committee not only receives and considers legislative proposals relating to education; it interviews candidates for educational positions, makes nominations to the council, and in the name of the council inspects and directs the work of the educational authorities. The rôle of committees thus becomes something very different from, and much more important than, anything of the kind in the government of the cities of the United States.

The Government of London. — The unique governmental arrangements of London are the product partly of historical survival and partly of special and comparatively recent legislation. Technically, the "city" of London is still what it was centuries ago, *i.e.*, an area with a government of its own comprising about one square mile on the left bank of the Thames. A series of measures covering a period of somewhat more than fifty years, however, has drawn the entire region occupied by the metropolis — geographically, parts of the three counties of Middlesex, Surrey, and Kent — into a carefully coördinated scheme of local administration. London was untouched by the Municipal Corporations Act of 1835, and the changes which brought into being the governmental system of the present day began to be introduced only with the adoption of the Metropolis Management Act of 1855. The government of the City was left unchanged, but the surrounding parishes, hitherto governed independently by their vestries, were at this time brought for certain purposes under the control of a central authority known as the Metropolitan Board of Works. The Local Government Act of 1888 went a step farther. The Board of Works was abolished, extra-city London was transformed into an administrative county of some 121 square miles, and upon the newly created London county council (elected by the ratepayers) was conferred a varied and highly important group of powers. Finally, in 1899 the London Government Act simplified the situation by sweeping away a mass of surviving authorities and jurisdictions and creating twenty-eight metropolitan boroughs, each with mayor, aldermen, and councilors such as any provincial borough possesses, although with powers specially defined and, on the side of finance, somewhat restricted. Within each borough are urban parishes, each with its own vestry.

The situation to-day, therefore, is briefly this. At the center of the metropolitan area stands the historic City, which is geographically in, but not politically of, the municipality. It is the heart of the English financial and business world, but it has a resident population of not above thirty thousand; and its government, composed of Lord Mayor, Court of Aldermen, and Court of Common Council, presents a singular combination of ancient and modern features. Outside of the City are twenty-eight contiguous metropolitan boroughs, which in their organization are a cross between ordinary boroughs and urban districts. Coextensive with these geographically, and exercising a large amount of control over them, is the administrative county of

London, with its one hundred and eighteen councilors and its nineteen aldermen, presided over by an elective chairman. And sweeping far out into the surrounding areas are the jurisdictions of the Metropolitan Water Board and the Metropolitan Police Board; the authority of the latter extends over all parishes within fifteen miles of Charing Cross, an area of almost seven hundred square miles.[1]

[1] For excellent descriptions of the government of London see Munro, *Government of European Cities*, 339–379 (bibliography, 395–402), and Lowell, *Government of England*, II, 202–232. Valuable works are G. L. Gomme, *Governance of London: Studies on the Place Occupied by London in English Institutions* (London, 1907); ibid., *The London County Council: its Duties and Powers according to the Local Government Act of 1888* (London, 1888); A. MacMorran, *The London Government Act* (London, 1899); A. B. Hopkins, *Boroughs of the Metropolis* (London, 1900); and J. R. Seager, *Government of London under the London Government Act* (London, 1904). An informing article is G. L. Fox, "The London County Council," in *Yale Rev.*, May, 1895.

The best work on the general subject of English local government is J. Redlich, and F. W. Hirst, *Local Government in England*, 2 vols. (London, 1903). There are several convenient manuals, among them P. Ashley, *English Local Government* (London, 1905); W. B. Odgers, *Local Government* (London, 1899), based on the older work of M. D. Chalmers; E. Jenks, *Outline of English Local Government* (2d ed., London, 1907); R. S. Wright and H. Hobhouse, *Outline of Local Government and Local Taxation in England and Wales* (3d ed., London, 1906); and R. C. Maxwell, *English Local Government* (London, 1900). The subject is treated admirably in Lowell, *Government of England*, II, Chaps. xxxviii–xlvi, and a portion of it in W. B. Munro, *Government of European Cities* (New York, 1909), Chap. iii (full bibliography, pp. 395–402). There are good sketches in Ashley, *Local and Central Government*, Chaps. i and v, and Marriott, *English Political Institutions*, Chap. xiii. The task of reform is described in H. J. Laski, *The Problem of Administrative Areas* (Northampton, 1918). A valuable group of papers read at the First International Congress of the Administrative Sciences, held at Brussels in July, 1910, is printed in G. M. Harris, *Problems of Local Government* (London, 1911). A useful compendium of laws relating to city government is C. Rawlinson, *Municipal Corporation Acts and Other Enactments* (9th ed., London, 1903). Two appreciative surveys by American writers are A. Shaw, *Municipal Government in Great Britain* (New York, 1898), and F. Howe, *The British City* (New York, 1907). On the subject of municipal trading the reader may be referred to Lowell, *Government of England*, II, Chap. xliv, and Lord Avebury, *Municipal and National Trading* (London, 1907). Among works on poor-law administration may be mentioned T. A. Mackay, *History of the English Poor Law from 1834 to the Present Time* (New York, 1900); P. T. Aschrott and H. P. Thomas, *The English Poor Law System, Past and Present* (2d ed., London, 1902); and S. and B. Webb, *English Poor Law Policy* (London, 1910). The best treatise on educational administration is G. Balfour, *Educational Systems of Great Britain and Ireland* (2d ed., London, 1904). Finally must be mentioned C. Gross, *Bibliography of British Municipal History* (New York, 1897), an invaluable guide to the voluminous literature of an intricate subject.

CHAPTER XIV

POLITICAL PARTIES SINCE THE EIGHTEENTH CENTURY

Importance and Uses of Party. — It may be set down as an axiom that political parties are not only an inevitable but a necessary and proper adjunct of any scheme of popular government. The moment the people set about deciding upon public policy, or electing representatives to formulate and execute such policy, differences of view appear; and out of these differences of view political parties arise. There is, of course, hardly anything that has been more abused than party organization and spirit. Party principles, party programs, party committees and managers, party treasuries, party propaganda — all have been brought into frequent disrepute; so that, as one writer has wittily remarked, while men may be willing to die for party, they seldom praise it.[1] None the less, political parties afford perhaps a clearer index than anything else of the political capacity and advancement of a nation. "The most gifted and freest nations politically are those that have the most sharply defined parties. . . . Wherever political parties are non-existent, one finds either a passive indifference to all public concerns, born of ignorance and incapacity, or else one finds the presence of a tyrannical and despotic form of government, suppressing the common manifestations of opinion and aspiration on the part of the people. Organized, drilled, and disciplined parties are the only means we have yet discovered by which to secure responsible government, and thus to execute the will of the people." [2]

The uses of political parties in a democracy are fivefold. First, they enable men who think alike on public questions to unite in support of a common body of principles and policies and to work together to bring these principles and policies into actual operation. Second, they afford a useful, if not indispensable,

[1] Low, *Governance of England* (new ed.), 119.

[2] P. O. Ray, *Introduction to Political Parties and Practical Politics* (new ed., New York, 1917), 9–10. See the comment on this subject in A. Esmein, *Eléments de droit constitutionnel français et comparé* (4th ed., Paris, 1906), 168–178.

means by which men who have the same objects in view may agree in advance upon the candidates whom they will support for office, and recommend them to the general electorate. Third, parties educate and organize public opinion and stimulate public interest, by keeping the public informed upon the issues of the day through the press, platform, and other agencies. Fourth, they furnish a certain social and political cement by which the more or less independent and scattered parts of the government (in so far as they are in the hands of men belonging to a single party) are bound together in an effective working mechanism. Fifth, the party system insures that the government at any given time will be subject to steady and organized criticism, whose effect will usually be wholesome.[1]

Government by Party in England. — In these and other ways parties contribute greatly to the carrying on of government in all democratic states. Nowhere, however, does "government by party" prevail in the same degree as in England. To understand why this is so it is necessary merely to bring together certain facts, some of which are already familiar. The most important single feature of the English government as it now operates is the cabinet system; and the essentials of this system include (1) the appointment of the ministers from the party which at the given time controls the House of Commons, and (2) the retirement of these ministers whenever they can no longer command the support of a parliamentary majority. This system arose out of the warfare of parties; it is inconceivable that it should ever have arisen without parties and party conflict. The connection is not, however, a matter merely of historical origins; parties are indispensable to the successful operation, and even to the continuance, of the system. The only kind of majority that has sufficient coherence and stability to make it dependable is a majority held together by the ties of party. In the absence of parties the situation would be either that ministries would rise and fall with lightning rapidity because no organized force would be interested in keeping them in power, or that they would go on ruling indefinitely after they had got entirely out of harmony with the popular chamber. There would be no point to the retirement of a ministry, did not

[1] Compare, however, the trenchant criticisms of parties and the party system contained in H. Belloc and G. Chesterton, *The Party System* (London, 1911), and R. Michels, *Les partis politiques; essai sur les tendances oligarchiques des démocraties* (Paris, 1914), trans. under the title *Political Parties: a Sociological Study of the Oligarchical Tendencies of Modern Democracy* (New York, 1915).

an opposing party stand ready to set up a ministry of a different sort and assume full power and responsibility.

The cabinet system and the party system are, therefore, intimately bound up together; indeed, they are but different aspects of the same working arrangement. In the United States parties stand outside the formal governmental system; until within recent decades their activities were not even subject to regulation by law. Many of the great party leaders and managers — for example, the chairmen of the national committees — are not public officials at all, and platforms are made by conventions whose members are drawn mainly from private life. In England, however, party works inside rather than outside the governmental system; speaking broadly, the machinery of party and the machinery of government are one and the same thing. The ministers — at all events those who sit in the cabinet — are at the same time the working executive, the leaders in legislation, and the chiefs of the party in power. The majority in the House of Commons, which legislates, appropriates money, supervises and controls administration, and upholds the ministers as long as it is able, is for all practical purposes the party itself; while over against the ministry and its parliamentary majority stands the Opposition, consisting of influential exponents of the contrary political faith, who, in turn, lead the rank and file of their party organization, and are ready to take the helm whenever their rivals fall out of favor in the popular chamber.

Two-Party Organization. — Not only is it true that a responsible ministry involves government by party; in order to work smoothly such a ministerial system requires the existence of two great parties and no more — each, in the words of Bryce, "strong enough to restrain the violence of the other, yet one of them steadily preponderant in any given House of Commons." [1] Considerations of unity and responsibility demand that the party in power shall be strong enough to govern alone, or substantially so. Similarly, when it goes out of power, a party of at least equal strength ought to come in. Obviously, this must mean two great parties, practically dividing the electorate between them. Any considerable splitting up of the people beyond this point is likely to result in the inability of any single party to command a working majority, with the result that ministries will have to represent coalitions, which will lack unity and responsibility, and will be liable to be toppled over by the

[1] *American Commonwealth*, I, 287.

first adverse wind that blows. This, as will appear, is precisely the situation in France, Italy, and several other continental countries, which, having copied the outlines of the English cabinet system, are vastly handicapped in operating the scheme by the multiplicity of parties and party groups. Despite the rise forty years ago of the Irish Nationalist group, and later of the Labor party, it was still true in Great Britain at the outbreak of the Great War, as it had been since political parties first made their appearance there, that two leading party affiliations practically divided between them the allegiance of the nation. The defeat of one meant the triumph of the other, and either alone was normally able to govern independently if elevated to power. As has been explained, the war brought about the formation of a coalition ministry and the practical cessation of party strife. None the less, the parliamentary election of 1918, while resulting in a decisive triumph for the coalition government, brought the old party lines again into view; and within the ensuing year and a half the probability that the politics of the country would fall back upon its accustomed basis of party became a substantial certainty.[1]

The Tory Ascendancy, 1783–1830. — The seventeenth-century origins of English political parties, the relations of Whigs and Tories after the Revolution of 1688–89, and the prolonged supremacy of the Whigs during the reigns of George I and

[1] For a fuller presentation of the relations of party and the cabinet system see Lowell, *Government of England*, I, Chap. xxiv. The best general description of English parties and party machinery is Chaps. xxiv–xxxvii of this same book. The growth of parties and of party organization is discussed in much detail with admirable temper in M. Ostrogorski, *Democracy and the Organization of Political Parties*, trans. by F. Clarke (London, 1902), I. A valuable monograph is A. L. Lowell, "The Influence of Party upon Legislation in England and America," in *Ann. Report of Amer. Hist. Assoc., 1901* (Washington, 1902), I, 319–542. An informing study is E. Porritt, "The Break-up of the English Party System," in *Ann. of Amer. Acad. of Polit. and Soc. Sci.*, V, No. 4 (Jan., 1895), and an interesting criticism is Belloc and Chesterton, *The Party System*. Early party development in relation to political ideas is treated in a scholarly manner in P. A. Gibbons, *Ideas of Political Representation in Parliament, 1651–1832* (Oxford, 1914). There is no adequate history of English political parties from their origins to the present day. G. W. Cooke, *History of Party from the Rise of the Whig and Tory Factions in the Reign of Charles II to the Passing of the Reform Bill*, 3 vols. (London, 1836–37), covers the subject satisfactorily to the end of the last unreformed parliament. Other party histories — as T. E. Kebbel, *History of Toryism* (London, 1886); G. G. Butler, *The Tory Tradition* (London, 1914); H. Cecil, *Conservatism* (London, 1912); L. T. Hobhouse, *Liberalism* (London, 1911); W. L. Blease, *Short History of English Liberalism* (London, 1913); C. B. R. Kent, *English Radicals* (London, 1899); W. Harris, *History of the Radical Party in Parliament* (London, 1885); J. B. Daly, *The Dawn of Radicalism* (London, 1892); and R. S. Watson, *The National Liberal Federation from its Commencement to the General Election of 1906* (London, 1907) — cover only limited fields. For other party histories see p. 281.

George II have been mentioned elsewhere.[1] During the eighteenth century the cabinet system slowly took form, aided by the sharp contests of the Whig and Tory elements. The Tories reconciled themselves to the Hanoverian succession with much difficulty, and only after the fall of Lord North's coalition ministry in 1783 did they give up their old ideas and become as loyal to the new dynasty, and to the new cabinet and party system, as were their opponents. Throughout the era of the French Revolution and of Napoleon they were almost continuously in power; until after 1815 they had the steady support of the governing classes in their efforts to protect the nation not only against the arms of the Corsican but against the contagion of continental revolutionism. At the date mentioned their position seemed impregnable. During the years covered by the ministry of Lord Liverpool (1812–27), however, their hold was gradually relaxed. The restoration of peace brought new and weighty problems; the movement for political reform, checked during the quarter century of war, set in afresh, and on a greater scale; bad economic conditions caused popular unrest, and even led to serious disorder. The Tories talked much about the aristocratic exclusiveness of the Whigs and sought to secure, or to hold, the support of such of the middle-class elements as had the parliamentary franchise. They were bent, however, upon maintaining the constitution of the kingdom absolutely intact, and upon preserving the political and social order by which it was buttressed; and, although in the reign of George IV (1820–30) the more progressive party leaders, notably Canning, Huskisson, and Peel, recognized that the demands of the nation would have to be met at some points, and notwithstanding that a number of liberalizing measures were permitted to be carried through Parliament, the changes which were made did not directly touch the most urgent problems of the day. In 1830 the resignation of the ministry of the Duke of Wellington marked the end of the half century of Tory ascendancy, and with a ministry presided over by Earl Grey the Whigs returned to power. With the exception of a few brief intervals, they and their successors, the Liberals, held office thenceforth until 1874.[2]

[1] See p. 40.

[2] Beginning with 1815, the best work on English political history in the earlier nineteenth century is S. Walpole, *History of England from the Conclusion of the Great War in 1815*, 6 vols. (new ed., London, 1902). A good general account is contained in I. S. Leadam, *History of England from the Accession of Anne to the Death of George II* (London, 1909), and in W. Hunt, *History of England from the Accession of George III to the Close of Pitt's First Administration* (London, 1905). Briefer ac

The Rule of the Whigs [Liberals], 1830–74. — The political history of this great era of Whig rule falls into some four or five stages. The first, extending from the accession of the Grey ministry in 1830 to the parliamentary elections of 1841, was an epoch of notable reforms, undertaken and carried through mainly by the Whigs, with the coöperation of various radical elements and of discontented Tories. This was the period of the first Reform Act (1832), the emancipation of slaves in the British colonies (1833), the beginning of parliamentary appropriations for public education (1833), the Factory Act (1833), the New Poor Law (1834), the Municipal Corporations Act (1835), and a number of other measures designed to meet urgent public needs. This was the time, furthermore, at which the party nomenclature of later days came into use; the name Whig was superseded by that of Liberal, while the name Tory, although not wholly discontinued in everyday usage, was largely replaced by the term Conservative.[1] The Liberals were in these years peculiarly the party of reform, but it must not be inferred that the Conservatives resisted all change or withheld support from all measures of political and social amelioration.

The second stage was the years covered by the Conservative ministry of Sir Robert Peel (1841–46), established in consequence of the decisive defeat of the Whigs at the elections of 1841. The memorable achievement of the Peel government was the repeal of the Corn Laws and the repudiation of substantially the whole of the protective system. But the tariff policy of the premier divided the Conservative party into the protectionists or old Conservatives, led by Disraeli and Lord Derby, and the free trade or liberal Conservatives, led by Aberdeen and Gladstone; and the breach enabled the Liberals, under Lord John Russell, to recover office in 1847.

A third stage, *i.e.*, 1847–59, was a time of ministerial instability. Disputes between Russell and Palmerston, the foreign minister, undermined the Liberal position, and in 1852 the Conservatives, under the leadership of Derby, returned to power. In 1853, however, the free trade Conservatives joined the Liberals, overthrew Derby, and placed in office a coalition ministry under

counts of the period 1783–1830 will be found in May and Holland, *Constitutional History of England*, I, 409–440, and in *Cambridge Modern History*, IX, Chap. xxii, and X, Chaps. xviii–xx (see bibliography, pp. 856–870).

[1] The name "Conservative" was employed by Canning as early as 1824. Its use was already becoming common when, in January, 1835, Peel, in his manifesto to the electors of Tamworth, undertook an exposition of the principles of what he declared should henceforth be known as the Conservative — not the Tory — party.

Aberdeen. This government survived until 1855, when, on account of discontent aroused by his management of England's part in the Crimean War, Aberdeen resigned and was succeeded by Palmerston, at the head of another Liberal ministry. Foreign difficulties drove Palmerston from office early in 1858, and the establishment of a second Derby ministry marked a brief return of the Conservatives to control. Defeated, however, on a resolution censuring the Government for the inadequacy of the reform bill introduced by it in 1859, and also for the failure of Lord Derby to prevent the war between France and Austria, the ministry resigned, in April, 1859, and Palmerston returned to power, with Gladstone and Russell as colleagues. Gladstone's acceptance of office under Palmerston marked the final severance of the Peelites from the Conservative party and ended all hope of the reconstruction for which both Gladstone and Derby had labored.

A fourth, and final, stage of the Liberal period covered the years 1859 to 1874. Its importance arises not merely from the fact that the culmination of the power of the Liberals during the nineteenth century was attained at this point, but from the further fact that it was during these years that the Liberal party was transformed and popularized so as to be made for the first time really worthy of the name that it bears. As long as Palmerston lived, the Liberals of the old school — men who abhorred radicalism and were content with the reform of 1832 — were in the ascendancy. But after the premier's death, in 1865, new ideas and influences asserted themselves and a new Liberal party rapidly came to the fore. This regenerated party, whose leader was Gladstone, definitely rejected the ideal of *laissez-faire*, took over many of the principles and policies of the Radicals, and, with the watchword of "peace, retrenchment, and reform," began to insist upon a broader parliamentary franchise and upon fresh legislation for the protection and general betterment of the masses. The new liberalism was paralleled, however, by a new conservatism, whose principal exponent was Disraeli. The new Conservatives likewise advocated franchise reform and legislation for the people, although they put more emphasis upon the latter than upon the former; and they especially favored a firm foreign policy, extension of British interests in all parts of the world, and adoption of a scheme of colonial federation. They appeared, at least, to have less regard for peace and for economy than had the Liberals.

The temper and tendencies of the parties as they gradually

assumed shape during the third quarter of the nineteenth century have been admirably characterized by an English historian as follows: "The parties of which Gladstone and Disraeli were the chiefs were linked by continuous historical succession with the two great sections or factions of the aristocracy, or hereditary oligarchy, which ruled Great Britain in the eighteenth century. But each had been transformed by national changes since the Reform Bill. The Whigs had become Liberals, the Tories had become Conservatives. The Liberal Party had absorbed part of the principles of the French Revolution. They stood now for individual liberty, laying especial stress on freedom of trade, freedom of contract, and freedom of competition. They had set themselves to break down the rule of the landowner and the Church, to shake off the fetters of Protection, and to establish equality before the law. Their acceptance of egalitarian principles led them to adopt democratic ideals, to advocate extension of the suffrage, and the emancipation of the working classes. Such principles, though not revolutionary, are to some extent disruptive in their tendency; and their adoption by the Liberals had forced the Tory Party to range themselves in defense of the existing order of things. They professed to stand for the Crown, the Church, and the Constitution. They were compelled by the irresistible trend of events to accept democratic principles and to carry out democratic reforms. They preferred, in fact, to carry out such reforms themselves, in order that the safeguards which they considered necessary might be respected. Democratic principles having been adopted, both parties made it their object to redress grievances; but the Conservatives showed a natural predisposition to redress those grievances which arose from excessive freedom of competition, the Liberals were the more anxious to redress those which were the result of hereditary or customary privilege. The harmony of the State consists in the equilibrium between the two opposing forces of liberty and order. The Liberals laid more stress upon liberty, the Conservatives attached more importance to order and established authority." [1]

Upon the death of Palmerston in 1865 Russell became premier a second time. But in the following year a franchise reform bill brought forward by the Government was defeated in the House of Commons, chiefly through the instrumentality of a group of old Liberals (the "Adullamites") who opposed any

[1] S. Leathes, in *Cambridge Modern History*, XII, 30–31.

change of the electoral system; and by curious circumstance it fell to the purely Conservative Derby-Disraeli ministry of 1866–68, not only to carry the first electoral reform since 1832, but to give the bill a more drastic character than any except the most advanced radicals had expected or desired. The results of the doubling of the electorate were manifest in the substantial majority which the new Liberals secured at the elections of 1868, and the Disraeli ministry (Derby had retired early in the year) gave place to a government presided over by the leader of the new Liberal forces, Gladstone. The years 1868–74, covered by the first Gladstone ministry, were given distinction by a remarkable series of reforms, including the disestablishment of the Church in Ireland (1869), the enactment of an Irish land bill (1870), the inauguration of national control of elementary education (1870), and the adoption of the Australian ballot in parliamentary and local elections (1872). Defeated at last, however, on an Irish university bill, the ministry resigned; and when, at the elections of 1874, the country was appealed to, the Conservatives obtained a clear parliamentary majority of fifty seats. This was the first really dependable majority, indeed, that the party had had since 1842. Disraeli became prime minister and Derby minister for foreign affairs.[1]

The Second Era of Conservative Ascendancy, 1874–1905. – During the five years covered by the life of the second Disraeli ministry British imperialism reached flood tide. The reforms of the Gladstone government were not undone, but the Conservative leaders interested themselves principally in foreign and colonial questions, and home affairs received scant attention. The result was public discontent, and at the elections of 1880 the Liberals obtained a parliamentary majority of more than

[1] The political history of the period 1830–74 is covered satisfactorily in W. N. Molesworth, *History of England from the Year 1830–1874*, 3 vols. (London, 1874). Other general works include: Walpole, *History of England*, Vols. III–VI, extending to 1856; H. Paul, *History of Modern England*, 5 vols. (London, 1904–1906), Vols. I–III, beginning with 1845; J. McCarthy, *History of Our Own Times from the Accession of Queen Victoria*, 7 vols. (1877–1905), Vols. I–III, beginning with the events of 1837; J. F. Bright, *History of England*, 5 vols. (London, 1875–94), Vol. IV; and S. Low and L. C. Sanders, *History of England during the Reign of Victoria* (London, 1907). Briefer treatment will be found in May and Holland, *Constitutional History of England*, I, 440–468, III, 67–88, and in *Cambridge Modern History*, XI, Chaps. i, xi, xii (see bibliography, pp. 867–873). Important biographies include S. Walpole, *Life of Lord John Russell*, 2 vols. (London, 1889); H. Maxwell, *Life of the Duke of Wellington*, 2 vols. (London, 1899); J. Morley, *Life of William E. Gladstone*, 3 vols. (London, 1903); J. R. Thursfield, *Peel* (London, 1907); W. F. Monypenny and G. E. Buckle, *Life of Benjamin Disraeli, Earl of Beaconsfield*, 6 vols. (London, 1910–20); and S. Lee, *Queen Victoria, a Biography* (rev. ed., London, 1904).

one hundred seats. It was incumbent upon the second Gladstone government, established at this point, to adjust a number of inherited difficulties on the frontiers of the Empire; but the ministry had no taste for this sort of work, and the way was cleared as speedily as possible for problems of a domestic nature. In 1884 the Representation of the People Act was carried, and in 1885 the Redistribution of Seats Act. Now, however, — and throughout a decade and a half following, — the question which overshadowed all others was Home Rule for Ireland. Upon this many-sided issue governments henceforth rose and fell, parties were disrupted and rebuilt. In 1885 the Parnellites, or Irish Nationalists, roused by Gladstone's indifference to Home Rule, and taking advantage of the ministry's unpopularity arising from the failure of its Egyptian policy, brought about the defeat of the Government on a measure relating to the taxation of beer and spirits. The Marquis of Salisbury, who after the death of Lord Beaconsfield, in 1881, had become leader of the Conservatives, made up a government; but, absolutely dependent upon the Irish Nationalist alliance, while yet irrevocably committed against Home Rule, the Salisbury ministry found itself from the outset in an impossible position.

The elections at the end of 1885 yielded the Conservatives 249 seats, the Irish Nationalists 86, and the Liberals 335; and in January, 1886, the Salisbury ministry retired. Gladstone returned to power, and Home Rule forthwith took a prominent place in the formal program of his party. Then followed, April 8, 1886, the introduction of the first of Gladstone's memorable Home Rule bills. The measure gave the Irish a separate parliament at Dublin, abolished their right of representation at Westminster, and required them to bear a proportionate share of the expenses of the Imperial government. It was thrown out by the Commons on the second reading. The Conservatives opposed it solidly; many of the Irish Nationalists were dissatisfied with it; and upwards of a hundred Liberal members, led by Joseph Chamberlain, flatly refused to follow the majority of their fellow-partisans in voting for it. Under the name of Liberal Unionists, these dissenters eventually broke entirely from their earlier affiliation; and, inclining more and more toward the position occupied by the Conservatives, they ended by losing their identity in the ranks of that party. Their accession brought the Conservatives new vigor, new issues, and even a new name; for of late the term Conservative has been generally dropped for the name Unionist.

The defeat of Home Rule was followed by a national election, the result of which was the return of 316 Conservatives, 78 Liberal Unionists, 191 Gladstone Liberals, and 85 Irish Nationalists. The combined unionists had a majority of 118, and on July 26, 1886, the short-lived third Gladstone government was succeeded by a second ministry presided over by the Marquis of Salisbury. Home Rule, however, was not dead. During the years of the Salisbury ministry (1886–92) the government was obliged to devote much attention to Irish affairs, and in 1892 the Liberals were returned to office on a platform which expressly stipulated Home Rule for Ireland.[1] The Conservative appeal to the country at this time was made on the ground, first, that Home Rule should be resisted, and, second, that the Government's achievements in reform and constructive legislation entitled the party to continuance in power; but in the new parliament there was an adverse majority of forty, and on August 18 Gladstone, for the fourth time, was requested to form a ministry.[2] The elections of 1892 are of farther interest because they marked the first appearance of independent labor representatives in Parliament. Miners' delegates and an agricultural laborer had been elected before, but they had identified themselves with the radical wing of the Liberals. There were now returned, however, four members, including John Burns and Keir Hardie, who chose to hold aloof and, as they expressed it, "to sit in opposition until they should cross the House to form a labor government."[3] The Home Rule bill which Gladstone introduced in February, 1893, differed from its predecessor of 1886 principally in not excluding the Irish from representation at Westminster. It passed the House of Commons by a majority of thirty-four, but the upper chamber rejected it by a vote of 419 to 41. In the face of such opposition it seemed useless to press the issue, and the bill was dropped. The House of Lords, whose power in legislation became greater at this point than at any time since 1832, balked the Government at every turn, and in March, 1894, Gladstone, aged and weary of parliamentary strife, retired from office. His last speech in the House of Commons was a sharp arraignment of the House of Lords, with a

[1] This was the "Newcastle Program," drawn up at a convention of the National Liberal Federation at Newcastle in October, 1891. Items in the program in addition to Home Rule included the disestablishment of the churches in Wales and Scotland, a local veto on the sale of intoxicating liquors, abolition of the plural franchise, and legislation defining employers' liability and limiting the hours of labor.

[2] C. A. Whitmore, *Six Years of Unionist Government, 1886–1892* (London, 1892).

[3] On the rise of the Labor party see p. 278.

forecast of the clash which eventually would lead (and, in point of fact, has led) to the curtailment of the powers of that chamber.

Lord Rosebery, who had been foreign secretary, assumed the premiership. But in June, 1895, the ministry suffered a defeat, and Lord Salisbury was for the third time asked to form a government. The retirement of Gladstone brought to light numerous rifts within the Liberal party, and when the new ministry, in July, appealed to the country, with Home Rule as a paramount issue, its supporters secured a majority of 152 seats over the Liberals and Nationalists combined. The Liberal Unionists elected 71 members; and to cement the Conservative-Unionist alliance Lord Salisbury made up a ministry in which the Unionist elements were represented by Joseph Chamberlain as colonial secretary, Viscount Goschen as first lord of the admiralty, and the Duke of Devonshire as president of the council. The premier himself returned to the post of foreign secretary, and his nephew, Arthur J. Balfour — once again Government leader in the Commons — to that of first lord of the treasury. The accession of the third Salisbury ministry marked the beginning of a full decade of Unionist rule. In 1902 Lord Salisbury, whose fourth ministry, dating from the elections of 1900, was continuous with his third, retired from public life; but he was succeeded in the premiership by Mr. Balfour, and the personnel and policies of the Government continued otherwise unchanged.[1]

During the larger part of this Unionist decade the Liberal party, rent by factional disputes and personal rivalries, offered only formal and ineffective opposition.[2] The Home Rule question fell into the background; and although the Unionists carried a considerable amount of social and industrial legislation, the interests of the period center largely in the Government's policies

[1] The most useful works on the party history of the period 1874–95 are Paul, *History of Modern England*, Vols. IV–V, and Morley, *Life of W. E. Gladstone*, Vol. III. J. McCarthy's *History of Our Own Times*, Vols. IV–VI, covers the ground in a popular way. Useful brief accounts are May and Holland, *Constitutional History of England*, III, 88–127, and *Cambridge Modern History*, XII, Chap. iii (bibliography, pp. 853–855). A book of some value is H. Whates, *The Third Salisbury Administration, 1895–1900* (London, 1901).

[2] The two principal aspirants to the succession were Lord Rosebery and Sir William Vernon-Harcourt. Rosebery represented the imperialistic element of Liberalism and advocated a return of the party to the general position which it had occupied prior to the split on Home Rule. Harcourt and the majority of the party opposed imperialism and insisted upon attention to a program of social reform. From Gladstone's retirement to 1896 leadership devolved upon Rosebery, but from 1896 to the beginning of 1899 Harcourt was the nominal leader, although Rosebery continued hardly less influential than before.

and achievements in the domain of foreign and colonial affairs. The most hotly contested issue of the decade was imperialism; the most commanding public figure was Joseph Chamberlain; the most notable enterprise undertaken was the war in South Africa. In 1900 the ministerial leaders decided to take advantage of the public spirit engendered by the war to procure a fresh lease of power for their party. Parliament was dissolved and, on the eve of the announcement of the annexation of the Transvaal, a general election was held. The Liberals, led since early in 1899 by Sir Henry Campbell-Bannerman, charged the Unionists with neglect of social and industrial matters, pledged themselves to educational, housing, and temperance reform, and sought especially to convince the electorate that they could be trusted to defend the legitimate interests of the Empire abroad. The Government forced the fight mainly upon the issue of South African policy, and, representing the opposition as "Little Englanders," went before the people with the argument that there could be no turning back from the course that had been entered upon in South Africa, and that the present ministry was entitled to an opportunity to carry to completion the work that it had begun. The appeal was successful. The Conservatives obtained 334 seats and the Liberal Unionists 68 — a total of 402; while the Liberals and Laborites secured only 186 and the Nationalists 82 — a total of 268. The Government majority in the new parliament was thus 134, almost precisely that of 1895.[1]

After the elections dissension within the Liberal ranks broke out afresh. The Rosebery wing maintained that, the South African war having been entered upon, it was the duty of all Englishmen to support it, and that the Unionist government should be attacked on this subject only on the charge of mismanagement. In July, 1901, Campbell-Bannerman was moved by the weakness of his position to demand of his fellow-partisans that they either ratify or repudiate his leadership of the party in the Commons. Approval was given, but no further progress was made. More and more it became clear that there could be no real revival of Liberalism until the war in South Africa should have been ended and the larger imperial problems involved in it solved. For a time the only clear-cut parliamentary opposition offered the Government was that of the frankly pro-Boer Irish Nationalists.

[1] W. Clarke, "The Decline in English Liberalism," in *Polit. Sci. Quar.*, Sept., 1901; P. Hamelle, "Les élections anglaises," in *Ann. des Sci. Polit.*, Nov., 1900.

The Liberal Revival. — The rehabilitation of the Liberal party took place during the years 1902–05. It was foreshadowed by the famous Chesterfield speech of Lord Rosebery, delivered December 16, 1901, although the immediate effect of that effort was merely to accentuate party cleavages,[1] and it was made possible by a reversion of the national mind from the war to domestic questions and interests. More specifically, it was the product of opposition to the Education Act of 1902, of public disapproval of what seemed to be the growing arrogance of the Unionist majority in the House of Lords, and, above all, of the demoralization wrought in the ranks of Unionism by the rise of the issue of preferential tariffs. In a speech to his constituents at Birmingham, May 15, 1903, Mr. Chamberlain, lately returned from a visit to South Africa and now at the zenith of his career, startled the nation by declaring that the time had come for Great Britain to abandon the free trade doctrines of the Manchester school and to knit the Empire more closely together, and at the same time to promote the economic interests of both the colonies and the mother country, by the adoption of a system of preferential duties on imported foodstuffs. Later in the year the gifted exponent of this novel program started a vigorous speaking campaign in defense of his proposals, and a large and representative, unofficial tariff commission was set up, charged with the task of framing, after due investigation, a tariff system which would meet the needs alleged to exist. Among the Unionist leaders a division of opinion arose which portended open rupture. The rank and file of the party was nonplused and undecided, and for many months the subject absorbed attention to the exclusion of very nearly everything else.[2]

[1] In this speech, delivered at a great Liberal meeting, a program was outlined upon which Rosebery virtually offered to resume the leadership of his party. The question of Boer independence was recognized to be settled, but leniency toward the defeated people was advocated; a general election, immediately after the close of the war, was demanded, and reorganization of the army and the navy, and reform of the educational system and of the public finances, were named as issues upon which the Liberals must take an unequivocal stand, as also temperance reform and legislation upon the housing of the poor.

[2] See pp. 297–301 below. The literature of the Tariff Reform movement in Great Britain is voluminous. The nature of the protectionist proposals may be studied at first hand in J. Chamberlain, *Imperial Union and Tariff Reform; Speeches Delivered from May 15 to November 4, 1903* (London, 1903). Useful discussions include T. W. Mitchell, "The Development of Mr. Chamberlain's Fiscal Policy," in *Ann. of Amer. Acad. of Polit. and Soc. Sci.*, XXIII, No. 1 (Jan., 1904); R. Lethbridge, "The Evolution of Tariff Reform in the Tory Party," in *Nineteenth Cent.*, June, 1908; and L. L. Price, "An Economic View of Mr. Chamberlain's Proposals," in *Econ. Rev.*, April, 1904. See also S. H. Jeyes, *Life of Joseph Chamberlain*, 2 vols. (London, 1903), and A. Mackintosh, *Joseph Chamberlain; an Honest Biography* (rev. ed., London, 1914).

In this situation the Liberals found their opportunity. Almost unanimously opposed to the suggested departure, they assumed with avidity the rôle of defenders of England's " sacred principle of free trade " and utilized to the utmost the appeal to the working classes in behalf of cheap bread. Mr. Chamberlain denied that his scheme meant a general reversal of the economic policy of the nation, but in the judgment of most people the issue was squarely joined between the fundamental principle of free trade and that of protection. Throughout 1904 and 1905 the Government found itself ever more embarrassed by the fiscal question, as well as by difficulties arising from the administration of the Education Act, the regulation of Chinese labor in South Africa, and a number of other urgent tasks; the by-elections showed an unmistakable drift toward Liberalism.

Hesitating long, but at the last bowing somewhat abruptly before the gathering storm, Mr. Balfour tendered his resignation on December 4, 1905. The Government had a working majority of seventy-six in the House of Commons, and the parliament elected in 1900 had still another year of life. In the House of Lords the Unionists outnumbered their opponents ten to one. The administration, however, had suffered an irreparable loss of prestige, and the difficulties arising from the fiscal cleavage appeared insuperable. Unable to follow Mr. Chamberlain in his projects, the premier had grown weary of the attempt to balance himself on the tight rope of ambiguity between the free trade and protectionist wings of his party. Not caring, however, to give his opponents the advantage that would accrue from an immediate dissolution of Parliament, to be followed by an election turning on issues raised by the record of the ten years of Unionist rule, he chose simply to resign and so to compel the formation of a new ministry which itself would be directly on trial when the inevitable elections should come.

The king named as premier the Liberal leader, Campbell-Bannerman, who forthwith made up a cabinet of somewhat exceptional strength in which the premier himself occupied the post of first lord of the treasury, Sir Edward Grey that of foreign affairs, Mr. Asquith that of the exchequer, Mr. Haldane that of war, Mr. Lloyd-George that of president of the board of trade, Mr. Burns that of president of the local government board, Mr. Birrell that of president of the board of education, and Mr. Bryce that of chief secretary for Ireland. On January 8, 1906, the " Khaki Parliament " was dissolved, a general election was ordered, and the new parliament was announced to meet at the

earliest legal date, February 13. The campaign that followed was exceptionally lively. The Unionists, being themselves divided beyond repair on the question of the tariff, pinned their hope to a disruption of the Liberal forces on Home Rule. The Liberal leaders, however, steadfastly refused to allow the Irish question to be brought into the foreground. Recognizing that Home Rule in the immediate future was an impossibility, but pledging themselves to a policy looking to its establishment by degrees, they contrived to force the battle principally upon the issue of free trade and, in general, to direct their most telling attack upon the fiscal record and fiscal policies of their opponents. The result was an overwhelming Liberal triumph. In a total of 6,555,301 votes,[1] 4,026,704 were cast for Liberal, Nationalist, and Labor candidates, and only 2,528,597 for Conservatives and Unionists. There were returned to the House of Commons 374 Liberals, 84 Nationalists, 54 Laborites, 131 Conservatives, and 27 Liberal Unionists, assuring the Liberals and their allies a clear preponderance of 354.[2] Prior to the elections careful observers believed that the restoration of the Liberals to power was certain; but a victory of such proportions was not dreamed of by the most ardent of the party's well-wishers.[3]

The Achievements of the Liberals, 1906–09. — The Liberal ascendancy, thus made secure, lasted until the exigencies of war required the setting up of a coalition government in 1915. This decade was one of the most interesting and important in the political history of modern Britain. Its significance arises principally from the vast amount of social and economic legislation which the successive Liberal ministries sought to place on the statute book. Much of this proposed legislation was successfully carried through, and is now in effect. Some important parts of it, however, failed of adoption, chiefly because of the opposition of the Unionist majority in the House of Lords; and a direct outcome of the conflicts that arose between the Liberals and the opposition in the upper chamber was the important constitutional readjustments provided for in the Parliament Act of 1911 already described. Speaking broadly, the Liberals were restored to power because the nation wanted certain things which

[1] The number of electors in the United Kingdom in 1906 was 7,266,708.

[2] Of the Opposition, 102 were Tariff Reformers of the Chamberlain school and only 16 were thoroughgoing "Free Fooders."

[3] M. Caudel, "Les élections générales anglaises (janvier 1906)," in *Ann. des Sci. Pol.*, March, 1906; E. de Noirmont, "Les élections anglaises de janvier 1906; les résultats généraux," in *Quest. Dipl. et Colon.*, Mar., 1, 1906; E. Porritt, "Party Conditions in England," in *Polit. Sci. Quar.*, June, 1906.

it seemed unlikely to obtain at the hands of the Unionists. Chief among these were: (1) reduction of public expenditures and curbing of national extravagance; (2) remission of taxation imposed during the South African war; (3) reform of the army; and (4) social reforms, embracing provision for old age pensions, relief of unemployment, regulation of the liquor traffic, and the liberation of education from ecclesiastical domination. The nation was plainly desirous, too, that the policy of free trade, now threatened by the Chamberlain proposals, should be maintained without impairment. To all of these policies, and more, the Liberals were unreservedly committed when they entered office.

During the years between the elections of 1906 and those of 1910 the Liberal governments presided over successively by Mr. Campbell-Bannerman and Mr. Asquith [1] made honest effort to redeem the election pledges of the party. They stopped the alarming increase of the national debt and made provision for debt reduction at a rate equaled in but two brief periods since the middle of the nineteenth century. They repealed approximately half of the war taxes which were still operative when they assumed office. They reduced the national expenditures temporarily, although the normal increase of civil outlays, the adoption of old age pensions, and, above all, the demand of the propertied interests for the maintenance of a two-power naval standard, eventually brought about an increase rather than a diminution of the sums carried by the annual budget. In accordance with a scheme worked out by Mr. Haldane, they remodeled the army. They upheld free trade. They made no headway toward Home Rule, but in 1909 they enacted an Irish Universities Bill and an Irish Land Purchase Bill which were regarded as very favorable to Irish interests. Above all, they labored to meet the demand of the nation for social legislation. The prevalence of unemployment, the misery caused by widespread poverty, the recurrence of strikes and other industrial disorders, the growing volume of emigration, and other related aspects of England's social unsettlement, served to fix in the public mind the idea that the state must plan, undertake, and bear the cost of huge projects of social and industrial amelioration and of democratization and reform. In this portion of their program the Liberals were only partially successful. They enacted

[1] Mr. Campbell-Bannerman resigned April 5, 1908, and was succeeded by Mr. Asquith, who, in turn, was succeeded as Chancellor of the Exchequer by Mr. Lloyd George.

important labor legislation, including a Workman's Compensation Act (1906), a Trade Unions and Trade Disputes Act (1906), an eight-hour working day in mines (1908), a Labor Exchanges Act (1909), a Trade Boards Act (1909), and in 1908 they established an elaborate system of old age pensions.[1] On account of the opposition of the House of Lords, however, they failed to carry the bill of 1906 for the abolition of plural voting, the hotly contested measure of 1906 providing for the undenominationalizing of the schools, the Aliens Bill of 1906, the Land Values Bill of 1907, the Licensing Bill of 1908, the London Elections Bill of 1909, and, finally, the Finance Bill of 1909, whose rejection by the Lords led to a dissolution of Parliament and the ordering of national elections in January, 1910.

The Liberals *vs.* the Lords: the Elections of January and December, 1910. — Four years of conflict with the Conservative majority in the upper chamber brought the Liberals to the conviction that it was useless to attempt to go farther until certain fundamentals were settled. The first was the assurance of revenues adequate to meet the growing demands upon the treasury. The second was the alteration of the character of the House of Lords so as to make certain the predominance of the popular branch of Parliament in finance and legislation. During the two years (1909–11) while these great issues were under debate the nation was stirred to its depths and party conflict was of unprecedented intensity. On the side of finance, Unionists and Liberals were in substantial agreement upon the policies — especially old age pensions and naval expansion — which made larger outlays necessary; the point on which they differed was the sources from which the necessary funds should be obtained. The solution offered in the Lloyd George budget of 1909 was the imposition of new taxes on land and the increase of liquor license duties and of the taxes on incomes and inheritances. The new burdens were intended to fall almost exclusively upon the propertied, especially the landholding, classes. To this plan the Unionists offered the alternative of tariff reform, urging that the needed revenues should be derived from duties laid principally upon imported foodstuffs, although the free trade members of the party could not consistently support this proposal. The rejection of the Finance Bill by the Lords, November 30, 1909, shattering the precedent of three centuries, brought to a head the question of the mending or ending of the Lords; and although

[1] For a brief account of this legislation see Ogg, *Economic Development of Modern Europe*, Chaps. xvii, xix, xxv.

the elections of January, 1910, were fought upon the immediate issue of the Government's finance proposals, the question of the upper chamber could by no means be kept in the background. The results of this election were disappointing to all parties save the Nationalists. The final returns gave the Liberals 274 seats, the Unionists 273, the Nationalists 82, and the Laborites 41. The Asquith government continued in office, but it was henceforth absolutely dependent upon the coöperation of the Labor and Nationalist groups. There was, of course, no very clear pronouncement upon the great issues involved; yet it was a foregone conclusion that the tax proposals would be enacted, that some reconstitution of the House of Lords would be undertaken, and that free trade would, at least for a while longer, be scrupulously maintained.[1]

The developments of the next year and a half have been noted elsewhere.[2] They comprised, in the main: (1) reintroduction and enactment of the Finance Bill of 1909; (2) announcement by Mr. Asquith of the Government's proposals for the alteration of the relations between the two houses of Parliament; (3) adoption by the House of Lords of the principle of Lord Rosebery's projected scheme of upper chamber reform; (4) interruption and postponement of the contest, caused by the death of Edward VII; (5) failure of the Constitutional Conference in the summer of 1910; (6) adoption by the second chamber of the reform resolutions of Lord Lansdowne; (7) dissolution of Parliament, after a period of but ten months, to afford an opportunity for a fresh appeal to the country on the specific issue of second chamber reform; (8) elections of December, 1910, and the assembling of the new parliament in January, 1911; and (9)

[1] R. G. Lévy, "Le budget radical anglais," in *Rev. Polit. et Parl.*, Oct. 10, 1909; G. L. Fox, "The Lloyd George Budget," in *Yale Rev.*, Feb., 1910; E. Porritt, "The Struggle over the Lloyd George Budget," in *Quar. Jour. of Econ.*, Feb., 1910; P. Hamelle, "Les élections anglaises," in *Ann. des Sci. Polit.*, May 15, 1910; S. Brooks, "The British Elections," in *N. Amer. Rev.*, Mar., 1910; W. T. Stead, "The General Elections in Great Britain," in *Rev. of Revs.*, Feb., 1910. A useful survey is Britannicus, "Four Years of British Liberalism," in *N. Amer. Rev.*, Feb., 1910, and a more detailed one is C. T. King, *The Asquith Parliament, 1906–1909; a Popular History of its Men and Measures* (London, 1910). A valuable article is E. Porritt, "British Legislation in 1906," in *Yale Rev.*, Feb., 1907. A French work of some value is P. Millet, *La crise anglais* (Paris, 1910). A useful collection of speeches on the public issues of the period 1906–09 is W. S. Churchill, *Liberalism and the Social Problem* (London, 1909). The nature and effects of the Finance Act based on the Lloyd George budget of 1909 and finally passed in 1910 are described in B. Mallet, *British Budgets, 1887–88 to 1912–13* (London, 1913), 289–331. The system of taxation in operation when the controversy began is explained in W. M. J. Williams, *The King's Revenue* (London, 1908).

[2] See pp. 150–156.

reintroduction and final enactment, in the summer of 1911, of the Government's momentous Parliament Bill. At the December elections the several contending forces proved so solidly intrenched that the party quotas in the House of Commons remained practically unchanged. They stood, in the new parliament, as follows: Liberals, 272; Unionists, 272; Nationalists, 76; Independent Nationalists (followers of William O'Brien), 8; and Laborites, 42. The Unionists gained substantially in Lancashire, Devonshire, and Cornwall, but lost an equal amount of ground in London and in scattering boroughs.[1]

From the Parliament Act to the Great War. — Fortified with a constitutional amendment enabling laws to be enacted without the assent of the House of Lords, and reasonably assured of the continued support of the Labor and Nationalist groups, the Asquith ministry now addressed itself to a comprehensive and long-deferred legislative program. The promise given in the Parliament Act to reconstitute the upper chamber on a popular basis was held in abeyance; as a matter of fact, when the Great War came on this task had not yet been reached. But legislation on four principal subjects was vigorously pushed: the protection of the working classes, the disestablishment of the Church in Wales, electoral reform, and — most important of all — Irish Home Rule.

The first object was largely attained, and with comparatively little controversy of a strictly partisan character, in (1) a National Insurance Act of 1911, setting up a general system of sickness and invalidity insurance, and also a scheme of unemployment insurance in the building and engineering trades, (2) a Minimum Wage Act, passed in 1912 to terminate a general strike among the miners, and (3) a Trade Union Act of 1913, which sought to relieve trade unions from part of the disabilities imposed upon them by the Osborne Judgment of 1909.[2] A Welsh Disestablishment

[1] On the elections of December, 1910, see P. Hamelle, "La crise anglaise: les élections de décembre 1910," in *Rev. des Sci. Polit.*, July-Aug., 1911; E. T. Cook, "The Election — Before and After," in *Contemp. Rev.*, Jan., 1911; Britannicus, "The British Elections," in *N. Amer. Rev.*, Jan., 1911. The best account of the adoption of the Parliament Bill is A. L. P. Dennis, "The Parliament Act of 1911," in *Amer. Polit. Sci. Rev.*, May and Aug., 1912. For other references see p. 162.

[2] On the National Insurance Act see Ogg, *Economic Development of Modern Europe*, 612–625; E. Porritt, "The British National Insurance Act," in *Polit. Sci. Quar.*, June, 1912; R. F. Foerster, "The British National Insurance Act," in *Quar. Jour. Econ.*, Feb., 1912; O. Clark, *The National Insurance Act of 1911* (London, 1912); and A. S. Carr, W. H. Stuart, and J. H. Taylor, *National Insurance* (London, 1912). The text of the Insurance Act is printed in *Bulletin of U. S. Bureau of Labor*, No. 102 (Washington, 1912). On the Trade Union Act see W. M. Geldart, *The Present Law of Trade Disputes and Trade Unions* (London, 1914), published also in *Polit. Quar.*, May, 1914.

Bill, on the general lines of a bill submitted in 1909, but conceding larger financial aid to the disestablished church, was introduced in 1912, and, after being twice rejected by the House of Lords, became, in 1914, the first measure to be placed on the statute book under the terms of the Parliament Act. A Franchise and Registration Bill, providing for manhood suffrage, abolishing plural voting and the separate representation of the universities, and simplifying the registration system, was introduced in the early summer of 1912. Agitation for woman suffrage was now going forward on a gigantic scale, and the Government's electoral bill became so encumbered with amendments that, under a ruling by the Speaker of the House of Commons, the measure was withdrawn, January 31, 1913. Embarrassment caused by the campaign of the woman suffragists, combined with pressure of other business, prevented the effort for general electoral legislation from being resumed before the war broke out, although a bill to abolish plural voting was twice passed by the House of Commons and, when sidetracked by the war, seemed certain to become law under the terms of the Parliament Act.[1]

Throughout the period the center of the political stage was occupied, however, by the Irish question. The fact may merely be noted here, because the phases through which this great controversy passed will be duly outlined in a later chapter. Introduced in the House of Commons April 11, 1912, the Government's Home Rule Bill finally became law only as the great international conflict was starting, two and one half years later, and only to be immediately withheld from actual operation pending supplementary legislation after the restoration of peace.[2] With the Irish problem as the principal bone of contention, the years 1913–14 were filled with bitterer party strife than England had known in a hundred years, if not indeed in her entire history.

Externally, at all events, the status of the parties underwent no notable change. The summer and autumn of 1912 saw vigorous campaigning by the Unionists, who felt that the Asquith government was losing its hold and predicted that the Welsh Disestablishment and Home Rule proposals would mean an early Liberal downfall. At thirty-eight by-elections contested by the Unionists since December, 1910, the Liberals had indeed suffered a net loss of eight seats; and one of the contests lost was in Midlothian, the constituency long represented by Gladstone, which in September, 1912, returned a Unionist member for the first time in thirty-eight years. There is a tradition that when a Liberal

[1] See p. 128.

[2] See p. 294.

government is defeated in Midlothian the end of that government is not far distant. The Unionists were handicapped by their differences on the question of tariffs on foodstuffs, and the Government pressed on relentlessly and fearlessly with its controversial measures. When challenged by the Unionists to submit the Irish question to the people at a general election, or at least to hold a referendum on the subject, Mr. Asquith and his colleagues replied that the electorate had already been duly consulted; and the unopposed return of the premier to Parliament by his constituency in the election to which he was required, early in 1914, to submit upon his acceptance of the war secretaryship, was urged by the Liberals as an indication that the Government retained unimpaired the confidence of the majorities that had continued it in power in 1910. Half a dozen defeats in by-elections in the winter of 1913–14, combined with a series of reverses in borough elections, pointed, however, to a different conclusion; and the premier himself felt it necessary, in the spring of 1914, to make a special appeal to the Labor forces for closer coöperation. When the Great War came on, the country was within fifteen months of a general election, entailed by the five-year limit placed upon the life of a parliament by the Parliament Act; and the indications were that the Unionists would be in a position to enter the contest with a very fair prospect of winning.[1]

[1] The political history of the period is recorded with some fullness in the *Annual Register* for the successive years. See also the summaries of parliamentary proceedings in the *Polit. Quar.*, Feb., May, and Sept., 1914.

CHAPTER XV

THE MAJOR PARTIES: COMPOSITION AND ORGANIZATION

Liberal and Conservative [Unionist] Alignments. — Having outlined the party history of the past hundred years, we are prepared to look somewhat more closely into the character of the parties themselves, as indicated by their composition, their organization and methods, and their principles and policies; and inasmuch as the Great War forced all party organizations completely out of their accustomed positions, it will be desirable to deal with these varied aspects of party affairs as they stood in 1914, and afterwards to speak separately of developments in the party situation during and since the conflict. The parties as they were on the eve of the war will therefore be described in this chapter and the two succeeding chapters; party movements since 1914 will be briefly dealt with in the concluding chapter of the series on this subject.

Of the four parties that had attained substantial importance by 1914, one, the Irish Nationalist, was localized in Ireland and had for its sole purpose the achievement of Irish home rule; another, the Labor party, was composed principally of workingmen (mainly members of trade unions) and existed to promote the interests of the laboring masses; while the two older and more powerful ones, the Liberals and the Conservatives or Unionists, were broadly national both in their constituencies and in the range of their principles and policies. It had been customary for these two major parties to engage in heated combat in Parliament and at the polls, and the casual spectator might suppose that they were separated by a very wide gulf. As a matter of fact, there was no difference between them that need prevent a flexible-minded man from crossing from one to the other. Even the names "Liberal" and "Conservative" had, and still have, less significance than might be supposed. During the generation which began with the Reform Act of 1832 the Liberals, indeed, extended the suffrage to the middle classes, reformed the poor law, humanized the criminal law, introduced a new and improved scheme of municipal administration, started public provision for elementary education, enacted statutes to safeguard the

public health, removed the disabilities of dissenters, and helped the country get definitely on a free-trade basis. In general, they labored to bring the political system into accord with the new conditions produced by the industrial revolution and by the growth of democratic ideas. But if the Conservatives of the period 1830–70 lived fairly well up to their party name, their attitude, none the less, was by no means uniformly that of obstructionists; and in the days of the Disraelian leadership they became scarcely less a party of reform than were their opponents. Beginning with the Reform Act of 1867, a long list of progressive, and even revolutionizing, measures must be credited to them; and in later years they and the Liberals vied in advocating old age pensions, factory legislation, Irish land reform, accident insurance, housing laws, and many other kinds of advanced and remedial governmental action.

The differences which have separated the two parties are not so much those of principle as those of means or, at the most, of tendencies. It has been a favorite contention of the Liberals that they are the more democratic, the more willing to trust the people, the more devoted to the interests of the masses — that they seek the well-being of the working classes from conviction, while their opponents do so only from a desire for votes; but the Unionists enter a strong, and to a degree plausible, denial. It used to be a theory of the Liberals, too, that they fostered peace and economy with more resoluteness than their rivals, and that the Unionists stood for a more aggressive, and even menacing, attitude abroad. There is some historical ground for these assertions. Yet the policy pursued in these matters is likely to be determined, year in and year out, far more by the circumstances that arise and by the temperament of individual ministers than by any deliberate or permanent principle of party. Undoubtedly the Liberals have had more regard for the peculiar interests of Scotland, Wales, and especially Ireland; yet even here the difference is not as great as is often supposed.

All in all, it would appear that the population of the United Kingdom, barring the Nationalist and Labor elements, was in 1914 about evenly divided between the Liberal and Conservative forces. Party composition, however, followed the lines of class or interest far more than in the United States; although all kinds of contradictory affiliations appeared, and it was never safe to assume that a man was of a given party connection simply because he belonged to a certain profession, class, or group. In the Conservative ranks, however, were found decidedly the larger part

of the people of title, wealth, and social position; almost all of the clergy of the Established Church, and some of the Dissenters, especially Wesleyans; a majority of the graduates of the universities[1] and of members of the bar; most of the prosperous merchants, manufacturers, and financiers; a majority of clerks, and approximately half of the tradesmen and shopkeepers; and a very considerable, although diminishing, number of working-people. The Liberal party contained a minor share of the professional and commercial classes, about half of the middle class (omitting clerks and other employees living on small fixed incomes), and at least half of the workingmen, although the Labor party was drawing off increasing numbers of the last-mentioned class. The Established Church in England and Wales was a bulwark of Unionism, but the Nonconformists were everywhere heavily Liberal.

Liberalism (in the party sense) drew the support of only an insignificant portion of the rank and wealth of the kingdom. At the middle of the nineteenth century the party indeed consisted fundamentally of two elements: (1) the aristocratic Whigs, of eighteenth-century antecedents, whose liberalism was of a very moderate sort, and (2) middle-class people enfranchised in 1832, who were more inclined to radicalism. The reform acts of 1867 and 1884 brought this second element great accessions of strength, and by drawing in the working people of the towns accentuated its radical propensities. The old-Whig and the more popular elements were, however, never really fused, and, beginning with the secession of the Liberal Unionists on Gladstone's first Home Rule Bill in 1886, the elements representing title, wealth, and fashion migrated almost *en masse* into the ranks of the opposing party. This drew off most of the old Whigs. In addition, many of the great manufacturers and traders, representing new and socially ambitious families, chose to link up their fortunes with conservatism. The immediate result was a decided weakening of the party, which was revealed no less by its failure to govern impressively in 1892–95 than by its low estate as an opposition party in 1895–1905. In the long run, however, there was a distinct gain in unity, and the party was able to become a party of liberalism in a degree that must otherwise have been impossible.[2]

[1] At the election of 1906, 21,505 of the 25,771 votes recorded in the university constituencies were cast for Unionist candidates. From 1885 to 1918 not a Liberal member was returned by any one of the universities.

[2] This Liberal secession is fully described and interpreted in Ostrogorski, *Democracy and the Organization of Political Parties*, I, Chap. ix. See also Morley, *Life*

Geographical Distribution of Party Strength. — The strength of Irish Nationalism up to 1914 lay almost wholly in Ireland, and that of the Labor party was largely confined to the great industrial centers and districts of England and Wales. The major parties, too, while less localized, were decidedly stronger in some portions of the country than in others. Scotland was overwhelmingly Liberal. Half of its counties and boroughs invariably returned Liberals to the House of Commons; a third more were predominantly Liberal; three or four counties were politically doubtful; not more than that number were predominantly Conservative. The situation in Wales was practically the same, except that the Liberal dominance was still more pronounced. On the other hand, England presented the aspect of a predominantly Conservative, or at all events Conservative and doubtful, stretch of country, generously spotted over with Liberal areas. Five of these Liberal regions stood out with some distinctness: (1) the extreme northeast, especially Northumberland, Durham, and parts of Cumberland; (2) a great belt stretching westwards from the Humber to Morecambe Bay, and including northern Lincoln, southern York, and northern Lancashire; (3) Norfolk and the other lands bordering the Wash; (4) a midlands area containing parts of Leicester, Warwick, Northampton, and Bedford; and (5) Devon and Cornwall, in the far southwest. The Conservative strongholds lay farther to the south and east. From Chester and Nottingham to the English Channel, and from Wales to the North Sea — this was the great area in which almost all of the notable strength of Conservatism was to be found, aside from the four or five Protestant counties of the Irish province of Ulster. From Oxford and Hertford southwards past London to the Channel there was not a county that was not predominantly Conservative. Perhaps the most strongly Conservative section of the entire country was the southeasternmost county, Kent.[1]

The existence of "two Britains," a northern and a southern, a Liberal and a Conservative, has long been a matter of comment among students of politics and of sociology; Disraeli gave it

of William Ewart Gladstone, III, Bk. x; Churchill, *Lord Randolph Churchill*, II, Chaps. xii–xiii; Jeyes, *Mr. Chamberlain*, Chaps. ix–x; Mackintosh, *Joseph Chamberlain*, Chaps. xvi–xx.

[1] See E. Krehbiel, "Geographic Influences in British Elections," in *Geog. Rev.*, Dec., 1916. A map which accompanies this article shows in colors the distribution of party strength on the basis of composite returns for the eight parliamentary elections between 1885 and December, 1910. A book of some interest in this connection is R. H. Gretton, *The English Middle Class* (London, 1917).

literary recognition in his novel *Sybil*. Leaving Wales out of account, the division line may be indicated roughly as the Trent River. North of the Trent, temperament, attitude, outlook are, and have been in the past hundred years, predominantly Liberal; south of the Trent, they have been predominantly Conservative. "The panics and perils of the Napoleonic wars," says an English writer, "had the sad result of driving out of the southern shires, where they once ran deep and strong, the traditions of Milton and Bunyan, of Pym and Hampden, each a southerner, and each a fearless apostle of liberty and democracy. Since 1800 the impulse to liberality of thought and action in politics has consistently come from the north and won its way against the steady resistance of the south. From the north came Wilberforce to banish slavery; from the north came Grey, Durham, Brougham, and the *Edinburgh Review* to give Britain parliamentary reform in 1832; from the north came Cobden and Bright to give her economic freedom and a true perspective of the American Civil War; from the north came Gladstone and his great Liberal majorities of 1868 and 1880; and in the northern by-elections after 1902 began the stern revolt of outraged democracy against the jingo imperialism of the Boer War period, which ended in Campbell-Bannerman's crushing victory of 1906. All progressive causes and Liberal administrations in Britain for the last century have drawn their electoral support and moral inspiration from the north, just as Tory imperialism and reaction have had their strong house of refuge in the south."[1]

This statement conveys a somewhat exaggerated impression; the south has been less uniformly reactionary than is here affirmed and (as has been emphasized above), whatever the differences between Liberalism and Conservatism in earlier generations, Conservatives have in later decades repeatedly proved themselves hardly less openminded and progressive than their rivals. Still, it cannot be denied that north and south have been, and are, fundamentally unlike in political temper and attitude. There are several reasons why they should be so. The first is the predominantly industrial character of the north as compared with the south. It was, indeed, the industrial revolution that first created the two Britains — the one devoted to manufacturing and mining, largely urban, meeting new problems, requiring novel legislation and drastic reforms, the other mainly landholding and agricultural, rural rather than urban, bound by immemorial custom, and hence by nature conservative. Trade unionism,

[1] "Hespericus," in *N. Y. Nation*, Aug. 17, 1919, p. 166.

the political activities of labor, the impulse toward higher standards of education created by the technical demands of industry — these and other forces have counted powerfully for Liberalism in the north.[1] On the other hand, the south has always been the chief seat of the great military and naval organizations, with their preconceptions of caste and their lack of touch with democratic influences. Furthermore, in the south dwell practically all of the very large number of retired and returned planters, merchants, sportsmen, concession-holders, and other magnates from the various parts of the overseas Empire — the successors of the Indian "nabobs" of a century ago, and, like them, too long accustomed to lording it over the undeveloped folk of the tropics to be likely to incline very strongly toward democracy at home. Finally may be mentioned the influence of the institutions of learning — not only the ancient universities but the great schools like Eton and Harrow — whose atmosphere, if not actual teaching, is strongly conservative. Three fourths of these institutions are south of the Trent.

In general, those regions in which the people are engaged mainly in manufacturing and mining have been Liberal, those in which they are engaged in agriculture have been Conservative; and among agricultural districts, it is the most fertile and best favored, such as Kent, that have been most decidedly Conservative. Regions in which small landholders abound are likely to be Liberal. Scotland is Liberal because of the hostility to landlordism, the exceptionally high state of education, the strong sense of independence and the sturdy democracy of the middle and working classes, and the weakness of the peerage in both numbers and influence. Wales is Liberal because of the preponderance of industry and mining, the scarcity of great landed estates, the radical temperament bred by an austere mode of life, and the strength of Nonconformism.[2]

[1] It is true that certain great northern cities — Liverpool, Birmingham, Manchester — have usually returned more Conservatives than Liberals to the House of Commons. But in most instances an explanation can be found in certain artificial factors that reverse the natural tendencies. Thus, Liverpool goes Conservative for the reason that the Conservatives, once in control of the municipal council, met the demands of the industrial population by surprisingly radical legislation and thereby won, and kept, the support of the masses, in national as well as local politics. Birmingham's leanings to Conservatism are traceable to the influence of the city's most eminent statesman, Joseph Chamberlain. Manchester was formerly Conservative, but swung into the Liberal column in 1906 as a protest against "tariff reform."

[2] For an excellent discussion of the cognate subjects of the strength of party ties and political oscillations see Lowell, *Government of England*, II, Chaps. xxxv–xxxvi.

Party Organization in Parliament. — In view of the long-continued growth of English parties, and of their general importance in the political system, one will not be surprised to find that they have developed elaborate machinery for holding their membership together, formulating principles and policies, selecting candidates for office, and winning the electorate to their side whenever there is to be a contest at the polls. Continuous and compact organization is essential for party life and power everywhere. But it is especially necessary in a cabinet-governed state, because there an election may be brought on at any time and by the most unexpected turn of events. There are no fixed "off years," in which a party can relax, as an American party can. Rather, every party must stand at all times equipped for instant combat. Nowhere is this more true than in Great Britain; and it may be added that, more than any other important people — in normal times, at all events — the British live in a state of perpetual political discussion and tension.

It has been pointed out that the party system and the cabinet system arose simultaneously and in the closest possible relations. The earliest party organization was the cabinet, which, indeed, remains to this day the highest party authority. The cabinet is, for all practical purposes, the party government, and as such it can brook no control by an outside organization. The party out of power has, it is true, no cabinet. But it has a group of recognized leaders who, if it were to come into power, would compose the cabinet; and for purposes of party management these men discharge substantially the same functions as if they were in ministerial office. Within the two houses, the Government and Opposition leaders supply all the party machinery that is needed except a small group of "whips" whose business it is, chiefly, to see that the party members are in their places when important votes are to be taken. The Government whips, usually four in number, are reckoned as ministers and are paid out of the public treasury, on the theory that it is their function to insure the presence of a quorum so that the appropriations can be voted.[1] The Opposition whips, commonly three in number, are of course private members, named by the leaders, and unsalaried.

The whips work under the general direction of the party leaders; indeed, the major fact about party organization in Parliament is

[1] The chief Government whip holds the office of Parliamentary Secretary to the Treasury, and the other three are Junior Lords of the Treasury. Cf. p. 75. On the origins of the whips see Ostrogorski, *Democracy and the Organization of Political Parties*, I, 137–140.

the absolute authority of these leaders. In the case of the lesser groups, all of the party members in the houses are occasionally convened in a caucus for deliberation on questions of policy. But in the larger parties this practice is quite unknown. General meetings are, indeed, sometimes called at one of the political clubs. But they are designed to give the leaders an opportunity to address and instruct their followers, and not at all as occasions for a free and general interchange of opinion. The only exception to this rule arises when the formal chief of the party is to be selected; and even then — although general discussion takes place — the decision is likely to be controlled by a handful of the principal members. The party organization in Parliament is quite complete within itself; except through such evidences of support as are given at the polls, the party at large does not choose its leaders at all, — not even the chief who will preside over the government while it is in power.[1]

An important intermediary between the party organizations in Parliament and the nation-wide party organizations presently to be described is the peculiar institution known as the Central Office. Both Liberals and Conservatives have a Central Office. The Liberal Central Office carries on its work nominally as the agent of the Central Liberal Association, a voluntary body of several hundred subscribers to the party funds, although in fact it is directed by an executive committee chosen by the party whips. The Conservatives have no Central Association, and the work of the Central Office is directed, both nominally and actually, by three chief party figures, *i.e.*, the leader, the chief whip, and the principal party agent. In both cases, the Central Office is essentially an extension of the whip's office, and the work is carried on by the principal agent and his assistants. The more opulent Conservative Central Office has paid agents in the provinces; the Liberal Office is obliged to work through other sorts of intermediaries, mainly the local party associations. In either case, the work performed is of a varied nature, although all of it relates, directly or indirectly, to the winning of elections. Literature is prepared and circulated; money is raised and distributed; the constituencies are aided, on their own request, in the search for candidates. The Central Office is linked up very closely with the party organization in Parliament, and it is to this Office, rather than to the great party organizations outside, that the parliamentary party leaders look for such action as they desire to have taken in the interest of the party. None the less,

[1] Lowell, *Government of England*, I, Chap. xxv.

expediency requires that these central agencies shall not work at cross purposes with the nation-wide organizations (the National Liberal Federation and the Conservative National Union),[1] and effort is made to preserve agreeable, if not close, reciprocal relations. Each party houses its Central Office and the headquarters of its popular organization in the same building in Parliament Street, and as a rule the secretary of one organization is made honorary secretary of the other.

Local Party Organizations. — Outside of Parliament, party organization was slow to develop. Local party associations first came into the field only after the reform act of 1832; the earliest nation-wide party organization was founded hardly more than fifty years ago.[2] A moment's thought will suffice to make clear why this should have been so. Prior to 1832, the electorate was small and scattered. The seats belonging to rotten boroughs were sold for cash; those belonging to "pocket boroughs" were filled at the dictation of some magnate, with or without the form of an election; in most of the constituencies which really elected members the suffrage was confined to a mere handful of the inhabitants; only here and there — as in Westminster — was the electorate large enough to form the basis for local party organization.[3] The reform act of 1832 altered this situation by creating half a million new electors and by rearranging the constituencies in such a way as to throw the choice of representatives in practically all cases into the hands of a considerable number of people. This at once raised the problem of organizing the voters with a view to accomplishing the results hitherto obtained by individual initiative or by informal conference of the few persons concerned; and the need of party organization steadily grew as the electorate expanded later in the century, notably under the terms of the acts of 1867 and 1884.

The earliest local party organizations were self-constituted registration societies, whose primary object was to get the new, inexperienced, and frequently apathetic voters on the parliamentary register and keep them there, in so far as these voters were prepared to support the party; although it must be added that the object was to keep them off the lists in so far as they were not thus disposed. Such societies appeared in both parties almost immediately after the legislation of 1832, and by 1840 they

[1] See pp. 271–275.

[2] Political, but not strictly party, associations of various kinds existed much earlier. See Ostrogorski, *Democracy and the Organization of Political Parties*, I, 117–134.

[3] See pp. 115–117.

became common throughout the country. Presently, too, their activities were broadened to include canvassing the voters in their homes, supplying them with information about the candidates, persuading the hesitant, and getting the loyal to the polls.[1] A new stage was reached in 1867. The reform act of that year gave certain of the great northern towns three members of Parliament apiece, but with a view to minority representation, specified that each elector should vote for only two candidates. Radical-minded Birmingham Liberals did not think well of the plan, and their local association worked out a scheme for the marshaling of the Liberal voters of their borough in such a manner as to enable them, by a carefully calculated distribution of votes, to capture the entire number of seats.

The main point to the reorganization was the conversion of the self-constituted Liberal association into a party "caucus" consisting of all dues-paying Liberal voters in the borough, with elected officers, a representative executive committee, and a large general committee to control the organization's policy and to nominate Liberal candidates for the three seats to which the borough was entitled. The caucus proved its worth in the elections of 1868 and became an established feature of Birmingham politics; under the leadership of Joseph Chamberlain it was still further democratized in 1873–77. The principles upon which it was based became the subject of widespread discussion and of much difference of opinion. But, in general, the idea commended itself, and by 1879 the Liberals were organized in a similar way in about one hundred places. The establishment of the National Liberal Federation in 1877 gave the movement a powerful impetus, because this organization (to be described presently) has consisted from the first of democratic local societies on the model of the Birmingham caucus. In ten years the number of societies affiliated with the Federation rose to seven hundred and sixteen.[2]

Organization of Liberals on these lines went on more rapidly in the towns than in the counties, because townspeople are easier to organize, and because the Liberal forces were predominantly

[1] Party organizations prior to the rise of the caucus are fully described in Ostrogorski, *op. cit.*, I, 135–160, and the effects of the reform act of 1832 on party activities are described in Seymour, *Electoral Reform in England and Wales*, Chap. iv.

[2] The rise of the caucus is clearly described in Ostrogorski, "The Introduction of the Caucus into England," in *Polit. Sci. Quar.*, June, 1893. A much fuller account is the same author's *Democracy and the Organization of Political Parties*, I, 161–249. The salient features are clearly presented in Lowell, *Government of England*, I, 469–478.

urban. But by the opening of the present century there was a Liberal association (this term is more commonly employed than caucus) in practically every constituency, rural and urban, in which the party was not in a hopeless minority. In a pamphlet entitled "Notes and Hints for the Guidance of Liberals," the Federation maps out a desirable form of organization for these societies. But, aside from requiring that their government shall be based upon popular representation, it lays down no positive regulations; and it is especially to be observed that the state seeks to regulate in no way whatever either these local associations or any other party organizations. Naturally, there is a certain amount of variation. Yet, in general, every rural parish has a primary association; every small town has a similar association, with an elected executive committee; every parliamentary division of a county has a council and an executive committee; every parliamentary borough is organized by wards and has officers and committees on the plan of the Birmingham caucus.

In local organization the Conservatives were hardly behind their rivals, and in the formation of a nation-wide league of local societies they led by a full decade. Local Conservative associations were created in largest numbers in the years following the reform act of 1867, and by 1874, when the party secured its first majority in the House of Commons since 1841, England and Wales contained approximately four hundred and fifty. In the next two years the number was almost doubled. The effectiveness of the Birmingham caucus, and of the Liberal machinery generally, was not lost upon the Conservative organizers. Besides, many of the local organizations were composed mainly or entirely of workingmen. Hence, the representative principle was gradually given fuller play, and the agencies of local party control became no less democratic than those employed by the Liberals. It is not necessary to describe the machinery in detail. As in the case of the Liberals, the authorities of the Federation recommend certain forms of organization, embracing mass meetings, committees, councils, and officials in such combinations as seem most likely to meet the needs of parishes, wards, county divisions, boroughs, and other political areas; and, in the main, these recommendations are observed. The Conservatives have had more money to spend on local organization than have the Liberals, and they have covered the country rather more effectively. Both parties, however, have had more success in organizing their adherents in the boroughs than in the rural sections.[1]

[1] Lowell, *Government of England*, I, Chaps. xxvii–xxviii.

The Conservative National Union. — It was inevitable that after a large number of local associations had come into the field to promote the interests of a given party they should be brought together in some form of a league or union. As has been stated, the Conservatives here led the way; and the main impulse was supplied by the feverish efforts of both parties to capture and organize the newly enfranchised townsmen of 1867. The National Union of Conservative and Constitutional Associations was established at a conference held in November, 1867. The constitution provided for a purely federal organization; the members were to be associations, not individuals. Any Conservative or Constitutional association might be admitted on payment of one guinea a year, and machinery of government was set up consisting of (1) a Conference, composed (in addition to the officers of the Union) of delegates elected by the several member associations, two from each, (2) a Council, consisting of the officers of the Union, twenty-four persons elected by the Conference, and not more than twenty others chosen by the principal provincial associations, with provision for a few honorary members, and (3) a president, a treasurer, and a board of trustees, elected by the Conference.

The new organization was slow to get on its feet; in ten years, fewer than one third of the local associations joined. However, it gradually proved its usefulness as a clearing-house of Conservative ideas and methods; and after a reorganization in 1885–86 which broadened its basis and strengthened its machinery it won the general support of the party. By 1888 the number of affiliated associations exceeded eleven hundred. One of the principal structural changes was the division of England and Wales into ten regions, each with a divisional organization resembling the organization of the Union itself. The divisional conferences failed to become important intermediate agencies of party deliberation, but the new machinery lent itself readily to party propaganda and discipline. The great deliberative agency of the party continued to be the Conference, meeting annually in some important city.[1] At first this body did not assume to give formal expression to its views on questions of public policy. But since 1885 it has freely exercised the right, not only to discuss such matters, but to adopt resolutions relating to them. These expressions of principle are presumably for the guidance of those who are directly responsible for the party's course in Parliament

[1] The original plan of triennial meetings, to be held invariably at London, was abandoned in 1868.

and before the country, namely, the ministers if the party is in power, the Opposition leaders if it is not in power. But as a matter of fact, very little attention is paid to these pronouncements within parliamentary circles. The Conservative Conference repeatedly passed resolutions looking to preferential tariffs before 1903 without creating a ripple on the political sea; the same proposals, coming from the Colonial Secretary, raised a tempest. Again and again, prior to 1914, the Conference declared for woman suffrage, but without perceptible effect on the parliamentary members.

From first to last, the Union has found its sphere of usefulness in relation with the voters rather than in relation with the party leaders and lawmakers. It has never been able to override the independence of the party organization in Parliament; as has been pointed out, it has nothing directly to do with the selection of the party chief who, when the party is in power, will occupy the supremely important post of premier. Its own function, as Lowell puts it, is really that of an electioneering body. It organizes new local associations where they are needed, aids and encourages local associations that are beset with special difficulties, distributes literature, provides popular lectures, collects and distributes information. In these ways it renders invaluable service. But as an organ for the popular control of the party, for formulating opinion, and for ascertaining and giving effect to the wishes of the rank and file, it is a mere pretense.[1] This has not been the less true since 1906, when the machinery was overhauled and made more broadly representative.[2]

The National Liberal Federation. — The triumph of the Conservatives in the elections of 1874 was attributed mainly to superior organization, and the idea took hold among Liberals that they, too, must organize nationally. The Birmingham caucus took the initiative, and a conference, attended by representatives of ninety-five local associations, was held at that city in May, 1877. A constitution was adopted; officers — chiefly residents of Birmingham, with Mr. Chamberlain as president —

[1] Lowell, *Government of England*, I, 570. The best accounts of the National Union are Lowell, *op. cit.*, I, Chap. xxx, and Ostrogorski, *Democracy and the Organization of Political Parties*, I, 250–286. Party methods are fully described in Ostrogorski, *op. cit.*, I, 329–501.

[2] The divisional organization was remodeled and extended, and the Council — renamed the Central Council — was enlarged to include (among other persons) one representative for every fifty thousand voters, or fraction thereof, in each county, and one for every twenty-five thousand in each parliamentary borough. It should be noted that the National Union here described covers England and Wales only; Scotland and Ireland have separate organizations.

were elected; and, under the name of National Liberal Federation, an organization was launched which was intended not only to strengthen the party machinery throughout the country but to wield large, if not controlling, influence in shaping party policy. The principal difference, indeed, between the new Liberal organization and the Conservative National Union was that, whereas the latter was founded almost exclusively for purposes of propaganda and discipline, the former was intended to be largely, if not primarily, a policy-determining agency. In the words of Lowell, "it was expected to be, as Mr. Chamberlain expressed it, a Liberal parliament outside the Imperial legislature; not, indeed, doing the work of that body, but arranging what work it should do, or rather what work the Liberal members should bring before it, and what attitude they should assume. By this process the initiative on all the greater issues, so far as the Liberal party was concerned, would be largely transferred from the Treasury Bench to the Federation."[1]

The government of the new organization was designed to be rather more democratic than that of the Conservative Union. The chief authority was a Council, which was a representative assembly composed of delegates from the local associations, not two from each, as in the Conservative Conference, but from five to twenty, according to population. At its annual meetings this body elected a president, a vice-president, a treasurer, and an honorary secretary; and these officers, combined with from two to five delegates chosen by each local association, and with twenty-five persons named by the Committee itself, made up the General Committee. The Council was the "Liberal parliament," in which issues and policies were threshed out; the Committee (which established its headquarters at Birmingham) was an executive agency, charged mainly with organizing local associations and keeping up the party morale.

Like the Conservative Union, the Liberal Federation grew slowly. In the first year, not above one hundred local associations joined, and up to 1886 the number did not exceed two hundred and fifty-five. The disruption of the party at this point on Gladstone's first Home Rule Bill threatened complete disaster. The storm, however, was weathered; indeed, certain benefits resulted. The constitution was amended to make representation on the Council more nearly proportional to population; the offices were moved from Birmingham to London, and closer relations were established with Gladstone and other party chiefs

[1] *Government of England*, I, 504.

in Parliament; and the new unity of the depleted party was evidenced by the gathering in of upwards of five hundred associations within two years.[1] As early as 1881 the Council began to try its hand at program-making, and during the ensuing decade this function was continuously exercised, although it fell out that what the body was usually expected to do was to ratify resolutions prepared in advance by committees, rather than to work out its own statements of policy.

The party out of power habitually talks freely about what it would do if it were in power, especially if it has no hope of an early return to power. This was the position of the Liberals in 1886–92; and the Council's resolutions committed the party from year to year to a steadily widening program, until a culmination was reached in the remarkable Newcastle Program of 1891.[2] The Gladstone and Rosebery governments of 1892–95 were handicapped by their inability to meet the expectations that had been aroused, and the party leaders became profoundly convinced of the inexpediency of such platform-making as had been indulged in at the successive Council meetings. Despite the opposition of radicals, therefore, this function of the Council was henceforth exercised under more restraint; and from 1896 the preparation of business for the General Committee, as well as for the Council, was vested in an Executive Committee[3] which, although including no members of Parliament, was expected to be a small body of men who could be depended upon not to bring embarrassment upon the parliamentary leaders. Nowadays, therefore, the Council is hardly more than an annual meeting of party delegates to hear and approve whatever announcements and proposals may be submitted to it by the General Committee, whose decisions, in turn, are really those of the smaller Executive Committee. Power has thus passed from the huge representative Council to a handful of carefully picked men; and it is communicated to the party chiefs and members in Parliament in only a very limited degree. Equally with the less ambitious Conservative Union, the Liberal Federation has failed to build up and maintain a great popular party legislature. Like its Tory counterpart, it is a very active and influential agency for the dissemination of party literature, the promotion of local party organization, and the administration of party machinery. But as an organ for

[1] Watson, *National Liberal Federation*, 54–82.

[2] See p. 248.

[3] This committee superseded a General Purposes Committee established some years earlier and consisting of the officers of the Federation and not more than twenty other persons designated by the General Committee.

the popular control of party policy and of the acts of the party representatives in Parliament, it, too, is a sham. In neither party nas a popular non-official organization been able to make headway against the bed-rock principle that in a cabinet system of government the parliamentary leaders must also be the party leaders.[1]

[1] Lowell, *Government of England*, I, Chap. xxix; Ostrogorski, *Democracy and the Organization of Political Parties*, I, 287–328. The principal account of the Liberal Federation is Watson, *National Liberal Federation*, which covers the subject to 1906. Watson was president of the Federation from 1890 to 1902. His book, however, fails to give the first-hand view of the organization's workings that might reasonably have been expected.

15-16

CHAPTER XVI

THE MINOR PARTIES: LABOR IN POLITICS AND IRISH HOME RULE

Labor in Politics: Trade Unionism and Socialism. — Of the two minor parties prior to 1914, the lesser in parliamentary strength but the more important otherwise was built up mainly by organized labor. Speaking broadly, the Labor party is a product of the twin forces of trade unionism and socialism, of which the one may be said to have supplied mainly the organization and the funds, and the other, the energy and the spirit. Trade unions are organizations of workers in particular crafts intended to promote collective bargaining with employers and other concerted action in the laborers' interest. They began to appear in England during the earlier stages of the industrial revolution, and in the nineteenth century they gained control of most of the important industries. Their legal status was long a source of controversy. The earlier restraints of law upon labor combinations were largely abolished in 1871–76. But in 1901 fresh discontent was aroused by a decision handed down by the House of Lords in the Taff Vale case recognizing the right of employers to collect damages from trade unions for injuries arising from strikes.[1] In 1906 the Liberals rewarded the labor elements for their support by passing a Trade-Unions and Trade-Disputes Act practically exempting the unions from legal process.[2] Again, in the Osborne Judgment of 1909 the House of Lords put pressure on the unions by ruling that they could not legally collect compulsory contributions for the support of labor members of the House of Commons; and once more the Liberals saved the day for their allies, first by the act of 1911 providing salaries for all members of the popular branch of Parliament, and later by a new Trade-Union Act of 1913 which permits trade-union funds to be used for political purposes in so far as they represent contributions made voluntarily for these purposes.[3] The

[1] Ogg, *Economic Development of Modern Europe*, 432–433.
[2] *Ibid.*, 433–434.
[3] See pp. 174–175.

Trade-Union Congress, which holds annual meetings for the consideration of political and industrial questions, represents at the present time approximately three million unionists; and since 1899 there has been a General Federation of Trade Unions, whose functions are chiefly financial, and which has a membership somewhat exceeding one million, in part duplicating that of the Congress.[1]

Forty years ago men freely predicted that socialism would never take root among the English people. But in point of fact England has of late been hardly less stirred by socialist agitation than Germany and France, and the spirit and ideals of socialism have been injected into parliamentary debates, and even into national and local legislation, quite as extensively as in most of the continental states. The number of organized socialists in the country has never been large; even to-day it does not exceed fifty thousand. But there are many men and women who are thoroughgoing socialists, yet not members of any socialist party or society, and multitudes of others whose minds are saturated with socialist ideas, who however do not call themselves by the name. The oldest socialist organization of importance is the British Socialist party, which, founded in 1880 as the Social Democratic Federation, maintained absolute independence until 1916, when, with a net numerical strength of only ten thousand, it entered into affiliation with the Labor party. The most famous socialist organization is the Fabian Society, established in 1883, and having a present membership of less than three thousand, but including a long list of scholars, writers, clergymen, and other men of achievement and influence.[2] The most prominent politically of socialist organizations is the Independent Labor party, organized in 1893 as a result of the first serious effort to unite the forces of socialism and labor. This party, whose membership to-day is about thirty thousand, eventually attained a certain amount of success; at the elections of 1906,

[1] The standard treatise on British trade unionism is S. and B. Webb, *History of Trade Unionism* (new ed., London, 1920). Somewhat more recent is G. D. H. Cole, *The World of Labour: a Discussion of the Present and Future of Trade Unionism* (2d ed., London, 1915).

[2] An official statement of the principles and objects of the Fabian Society will be found in Orth, *Socialism and Democracy in Europe*, 327–330. The best general account is E. R. Pease, *History of the Fabian Society* (London, 1916). *The New Statesman*, a weekly organ, was founded in 1914 to advocate Fabian doctrines. The history of English socialism is accurately presented in B. Villiers, *The Socialist Movement in England* (2d ed., London, 1910), and in M. Beer, *Geschichte des Sozialismus in England* (Stuttgart, 1913). There is an English translation of the last-mentioned book under the title *History of British Socialism*, 2 vols. (London, 1919–20).

when the tide of radicalism was running strong, seven of its candidates and sixteen of its members were elected to the House of Commons. It has always been too aggressively socialist, however, to attract the mass of laboring men.

The Labor Party: Composition and Character. — As far back as 1874 a few members of Parliament were elected as labor men, and as the nineteenth century drew to a close strong demand arose in labor circles for a broadly based party which should carry on political activities in behalf of labor precisely as the Trade-Union Congress and its subsidiaries carried on activities of a financial and industrial character. This need was met by the organization of the present Labor party. The Trade-Union Congress of 1899, meeting at Plymouth, caused to be brought into existence a group of representatives of all coöperative, trade-union, socialist, and working-class organizations that were willing to share in an effort to increase the representation of labor in Parliament. This body, numbering one hundred and twenty-nine delegates, held its first meeting at London in February, 1900, and an organization was formed in which the ruling forces were the politically inclined, but non-socialistic, trade unions. The object of the affiliation was declared to be "to establish a distinct labor group in Parliament, who shall have their own whips and agree upon their own policy, which must embrace a readiness to coöperate with any party which for the time being may be engaged in promoting legislation in the direct interest of labor, and be equally ready to associate themselves with any party in opposing measures having an opposite tendency."[1]

The new organization grew rapidly. At the elections of 1906 fifty candidates were put in the field, and twenty-nine (of whom only four had had parliamentary experience), were elected — forming by far the largest labor group that had as yet appeared on the floor of the House of Commons. The Liberals now had a majority sufficiently large to make them entirely independent. Yet they were under obligation to the labor elements for past support and by past pledges, and, furthermore, many of them were not opposed to the more moderate labor demands. Consequently, the political "revolution" of 1906 became the starting point in a new era of labor legislation and labor relief, whose earliest important development was, as has been pointed out, the adoption of the Trade-Unions and Trade-Disputes Act of 1906.

After its great victory the Labor Representation Committee, having attained its immediate object of creating a distinct rep-

[1] *Labour Year Book* (1916), 306.

resentation of labor in Parliament, dropped its unassuming name and took the title of "Labor party." The constitution of the organization was overhauled, and the governing body was made an annual congress, composed of delegates representing the affiliated societies in proportion to their membership. The party executive consists of a national committee of sixteen members, who are apportioned among the principal affiliated bodies and elected at the annual congress by the groups of delegates representing those bodies respectively. This committee elects its own chairman (who thereby becomes chairman of the party), approves candidates and sanctions candidatures, issues party literature, and in a general way directs the work of the party outside of the House of Commons. It coöperates with the parliamentary group in considering the legislative program of each session, and on important matters of policy joint meetings between the two bodies are arranged. It is expected of candidates for seats that they will promise to be guided by the decisions of the party, arrived at in the annual congresses, at least in matters related to the objects for which the party exists.[1] The party is financed by fees assessed upon the affiliated societies at the rate of 1*d.* per member per year. In 1914 the party had committees on foreign affairs, electoral reform, unemployment, finance, government workers' conditions, and several other subjects. The parliamentary group, known as the Parliamentary Labor party, was compactly organized, with its chairman, secretary, and whips. Outside of Parliament, the party was, however, simply a loose federation of trade unions, trades councils, local labor parties, socialist societies, and coöperative societies, having, in 1915, a total membership of somewhat over two millions. This flexibility of organization seems to be a main reason why the party has prospered beyond all other political combinations of labor in the country. An incidental, but extremely important, effect of such flexibility is that men of all social classes and all industrial connections belong to the party — scholars, writers, dramatists, artists, lawyers, teachers, physicians, clergymen, and even employers of labor, equally with the workmen of factory, shop, and farm.

The Labor party has served as no other agency to link up socialism and trade unionism. Until 1907 it refused to commit itself to socialistic principles, and, as has been pointed out, the

[1] This illustrates the fact that Labor organization is more unified than Liberal or Conservative organization. Liberal and Conservative members of Parliament are in no way bound by the action of the party congresses.

party owed its earlier strength largely to this policy. In the year mentioned, however, the party congress adopted a resolution declaring for "the socialization of the means of production, distribution, and exchange, to be controlled in a democratic state in the interest of the entire community, and the complete emancipation of labor from the domination of capitalism and landlordism, with the establishment of social and economic equality between the sexes." This is, of course, a socialistic declaration, yet with no hint of class war or revolution, and its general effect was to augment rather than to diminish the party's strength. In point of fact, such of the party leaders as J. Ramsay MacDonald and Philip Snowden, and more than half of the parliamentary group, are socialists. The adoption of the resolution of 1907 brought the Labor party and the "I. L. P." into closer accord, and thereafter the Labor forces at Westminster acted substantially as a unit. In the period 1907–09 the Labor members advocated medical inspection of school children, compulsory provision of meals for necessitous school children, the setting up of wage boards for sweated industries, a more generous administration of the fair-wages clause of government contracts, unemployment insurance and the establishment of labor exchanges, regulation of the liquor trade on the principle of local option, and taxation aimed at "securing for the communal benefit all unearned increment of wealth" and at "preventing the retention of great fortunes in private hands." It aided in the enactment of the old age pensions and miners' eight hour laws, and it strenuously opposed tariff reform, especially taxes on food. It urged salaries for members of the House of Commons and the placing of returning officers' expenses upon the public treasury; and in a notable resolution introduced in 1907 it called for the abolition of the House of Lords, as being "a hindrance to national progress."[1]

At the elections of January and December, 1910, some seats were lost. None the less, the spokesmen of labor in the House of Commons from 1910 to the war fluctuated between forty-two and forty-five, of which number about half were identified with the Labor party proper and the remainder with the Independent Labor party or with a Liberal Labor element which pursued its own policy in industrial matters but in other respects was only a segment of the Liberal party. After 1910 the Labor group occupied a position of power altogether disproportionate to its numerical strength; for the Liberal government, having lost the

[1] *Labour Year Book* (1916), 323.

huge parliamentary majority which it obtained in 1906, was dependent upon the support of its allies, the Nationalist and Labor members. Naturally, the advantage thus gained was turned to account in the promotion of industrial and social legislation. The proposal to abolish the House of Lords was renewed, but the party finally gave its support to the Government program of upper chamber reform which culminated in the Parliament Act of 1911. The National Insurance Bill and the bill for the payment of members were likewise carried with Labor aid in 1911; and Labor was to a great extent the author of the Minimum Wage Act of 1912 and the Trade-Union Act of 1913. In 1913 the party introduced a bill for the nationalization of mines and minerals.

The influence of the Labor forces on legislation was thus considerable. None the less it was recognized by practical labor leaders that the situation was exceptional, and that in the long run labor could expect to be politically powerful only in one of two ways — by using its votes under some consistent plan within the ranks of the older parties or by building up a third party of sufficient strength to combat its rivals on approximately even terms. The second of these alternatives, although not hopeless, presented great difficulties. The elements from which a great coördinate Labor party would have to be constructed were, and seemed likely to remain, fundamentally inharmonious, the principal source of friction being socialism. And, even if the tendencies to internal discord could be overcome, there would remain the fact that among the English people the bi-party system appeared to be solidly intrenched and that no third party had ever been able to prevent the dissipation of its strength through the continuous re-absorption of its membership into the ranks of the Government and the Opposition.[1]

The Irish Nationalists: the Irish Question to 1905. — The second minor party in the period before the Great War was the Irish Nationalist organization, which differed from all of the other

[1] On the fortunes of the Labor party since 1914 see Chap. XVIII. The political organization of labor in the United Kingdom to the past decade is adequately described in Lowell, *Government of England*, II, Chap. xxxiii, and more fully in C. Noel, *The Labour Party, What it Is, and What it Wants* (London, 1906), and A. W. Humphrey, *History of Labor Representation* (London, 1912). See E. Porritt, "The British Socialist Labor Party," in *Polit. Sci. Quar.*, Sept., 1908, and "The British Labor Party in 1910," *ibid.*, June, 1910; M. Alfassa, "Le parti ouvrier au parlement anglais," in *Ann. des Sci. Polit.*, Jan. 15, 1908; H. W. Horwill, "The Payment of Labor Representatives in Parliament," in *Polit. Sci. Quar.*, June, 1910; J. K. Hardie, "The Labor Movement," in *Nineteenth Century*, Dec., 1906; and M. Hewlett, "The Labor Party of the Future," in *Fortnightly Rev.*, Feb., 1910.

parties in that it was established and managed on a purely sectional, racial, and religious basis. The fiercest party strife of recent decades has centered around the Irish question. Furthermore, there has never been a time since the conquest of Ireland by the English in the twelfth century when there was not an Irish question of considerable seriousness. By 1850 the question presented three main phases. The first was religious. Descendants of Scottish and English settlers, grouped mainly in five northern and northeastern counties of the province of Ulster, were Protestants (Episcopalians or Presbyterians); the remainder of the population — nearly four fifths — was almost solidly Catholic. Yet the Protestant "Church of England and Ireland" was the established church throughout the island, to whose support all of the people were required to contribute. The second aspect of the question was agrarian. A long series of conquests and confiscations had brought almost all of the land into the hands of English proprietors, and the once independent and prosperous natives had sunk to the level of a poverty-stricken peasantry, living as tenants on the great estates, and enjoying scarcely any rights as against the powerful landlords. The third difficulty was political, arising out of the fact that the island had lost even the slender rights of self-government that it had in the eighteenth century, and was now ruled from London practically as a crown colony.

The religious grievance was, in the main, removed in 1869 by an act disestablishing and partially disendowing the "Church of England and Ireland";[1] and the land situation was slowly improved by legislation begun in 1870 and carried forward, by both Liberals and Conservatives, until 1914, when the question could be regarded as virtually settled.[2] The problem of government proved more baffling. As has been explained, Ireland had a separate parliament until 1800, but lost it in that year by acts, passed concurrently by the Irish and British parliaments, joining the lesser country with England, Wales, and Scotland in the United Kingdom of Great Britain and Ireland.[3] The so-called Irish parliament was really a body of Englishmen and English sympathizers; besides, a majority for the union bill was obtained by wholesale bribery. The Irish people, therefore, had no chance to influence the decision. From the outset they strongly opposed the new arrangement, and their protest was

[1] Turner, *Ireland and England*, 180–187.
[2] *Ibid.*, 188–225.
[3] See p. 43.

registered in Emmet's rebellion of 1803 and in a long series of unfortunate events during ensuing decades. A Catholic Emancipation Act of 1829, which made Catholics eligible for election to Parliament and for appointment to most public offices, gave some relief, but without touching the fundamental grievance. Under the leadership of Daniel O'Connell, who believed in "agitation within the law," a peaceful "home rule" movement was set on foot about 1834 with a view to the complete repeal of the Act of Union; a Repeal Association was founded in 1840. The agitation was suppressed in 1843 by the authorities; whereupon various insurrectionary efforts were made, with equal lack of success. In 1858 a Fenian Brotherhood, taking its name from *Fiana Eirean*, the old national militia, was organized by Irish refugees in the United States, and soon both England and Ireland were in the grip of a revolutionary movement whose aim was nothing less than to establish an independent Irish republic by a policy of terrorism. For thirty years Fenian outrages (notably the Phœnix Park murders in Dublin in 1882) and drastic acts of suppression on the part of the government followed in dreary succession. Their net effect, however, was only to add to the accumulated misunderstandings between the two peoples.[1]

The methods of the Fenians were disapproved by the large numbers of Irishmen who, like O'Connell, believed in peaceful, legal agitation, and in 1870 a meeting was held at Dublin at which, under the leadership of Isaac Butt, a young Protestant lawyer, a Home Government Association was organized with a view to upholding the Irish cause in a fashion better calculated to win the favorable consideration of the English people. The object of the new association, as set forth in the resolutions of the Dublin conference, was to secure for Ireland a parliament of her own, and to obtain for that parliament, under a federal arrangement, the right of legislating for, and regulating all matters relating to, the internal affairs of Ireland, and control over Irish resources and expenditure, "subject to the obligation of contributing our just proportion of the Imperial expenditure." Butt himself advocated "the federation of the Empire on a basis of self-governed nations," on lines proposed by later friends of devolution.[2] On the Dublin platform the Association (renamed, in 1873, the Irish Home Rule League) won several victories at by-

[1] The testimony of Gladstone should be noted, however, that the Fenian activities "produced among Englishmen an attitude of attention and preparedness which qualified them to embrace, in a manner foreign to their habits in other times, the vast importance of the Irish controversy."

[2] See p. 201.

elections; and at the general elections of 1874 it returned sixty members. The indifference with which the speeches of Butt and his colleagues in Parliament were greeted led the League to a more radical stand; by 1880 the full repeal of the legislation of 1800 had become the minimum program. Meanwhile Butt, whose sanity of views was not equaled by his capacity for leadership, was practically superseded, in 1877, by one of the most remarkable orators and parliamentarians of the time, Charles Stewart Parnell. Although barely thirty years of age, a Protestant, and a landlord, Parnell quickly transformed a disorganized faction into a compact and aggressive party. Fortified by an alliance with Michael Davitt's turbulent Land League, and wielding a rod of iron over the House of Commons by the use of a clever system of obstructionism, the new leader brought the Irish question into the very center of the political stage.

Obviously, the success of the movement was conditioned upon the support of one or the other of the two great English parties. For a time — especially when, in 1885, Salisbury selected for the post of Lord Lieutenant in Ireland a leading advocate of the federal idea — it seemed that the desired backing would come from the Conservatives; and at the elections of the year mentioned the Nationalists, while not abandoning their own campaign, worked openly for the success of Conservative candidates. Conservative opinion on the subject had, however, undergone no real change, and the discovery quickly broke the alliance and left the Salisbury ministry without a majority. Now it appeared, however, that Mr. Gladstone, after long holding out, had been won over to the cause; indeed upon becoming prime minister, in January, 1886, the new champion, as has been related elsewhere, brought in a bill setting up a separate parliament at Dublin and withdrawing Irish representation altogether from the House of Commons at Westminster.[1] Many Liberal members refused to support the measure, which failed to pass, even in the lower chamber. Furthermore, as has appeared, the bill permanently disrupted the Liberal ranks. But the major portion of the party, which remained faithful to Gladstone's leadership, now accepted Home Rule as one of its cardinal tenets; and when, in 1893, Gladstone's last ministry brought in another bill on the subject, the effort was unsuccessful only because of an adverse vote by the Unionist majority in the House of Lords. During the ensuing decade of Unionist rule (1895–1905) the question was in abeyance. There was much excellent legislation for Ireland;

[1] See p. 247.

but the party was unalterably opposed to Home Rule, and agitation on the subject was recognized to be practically useless.[1]

The Issue Analyzed: the Government of Ireland. — When the Liberals regained power it was assumed that, sooner or later, they would renew the attempts of 1886 and 1893. That they did not do so for several years was due to the disinclination of the leaders to jeopardize the party's position, to the vast majority in the House of Commons which relieved the party of any need of aid from the Nationalists, and to informal pledges made upon taking office that a Home Rule bill would not be introduced in the parliament elected in 1906.[2] In the course of time the situation changed completely. The parliamentary elections of 1910 stripped the Asquith ministry of its huge majority and left it dependent upon the votes of the Nationalist and Labor groups. Like the Laborites, the Nationalists were duly appreciative of their new importance, and they spared no effort to impress upon the Liberal leaders that the price of their support would be a Home Rule bill.[3] Furthermore, whereas formerly such a measure would have been certain to be defeated in the House of Lords, the Parliament Act of 1911 opened a way for its enactment regardless of Unionist opposition. The upshot was that on April 11, 1912, the premier introduced a comprehensive Home Rule

[1] The literature of the Irish question is very extensive, and only a few of the most useful books and articles can be mentioned in these footnotes. A fuller sketch of the Home Rule movement than that given here is May and Holland, *Constitutional History of England*, III, Chap. iii. The best brief survey of Irish history is P. W. Joyce, *Concise History of Ireland from the Earliest Times to 1908* (20th ed., Dublin, 1914). The best account of Irish affairs in the eighteenth century is W. E. H. Lecky, *History of England in the Eighteenth Century* (New York, 1878 90), Vols. VII–VIII. An excellent summary of recent history is E. Barker, *Ireland in the Last Fifty Years* (Oxford, 1917). The best biography of Parnell is R. B. O'Brien, *Life of Charles Stewart Parnell*, 2 vols. (New York, 1898), and the standard history of the Nationalist party is F. H. O'Donnell, *History of the Irish Parliamentary Party*, 2 vols. (London, 1910). An excellent collection of studies by specialists is R. B. O'Brien [ed.] *Two Centuries of Irish History*, 1691 1870 (2d ed., London, 1907). The most judicious surveys of Irish history in relation to British control, and of the entire problem of Ireland's cultural and political status, are L. Paul-Dubois, *L'Irlande contemporaine et la question Irlandaise* (Paris, 1907), trans. by T. M. Kettle under the title *Contemporary Ireland* (London, 1908), and E. R. Turner, *Ireland and England* (New York, 1919).

[2] An Irish Council bill, introduced in 1907, proposed to put eight of the principal Irish boards under the control of a central Representative Council consisting of 24 members appointed (after the first time) by the Lord Lieutenant and 82 others elected on the local government register. The object was merely administrative "devolution," and no changes in legislative machinery were contemplated. Irish sentiment was unfavorable, and the bill was dropped after its first reading.

[3] "I believe the Liberals are sincerely friendly to Home Rule," declared the Nationalist leader, John Redmond, in a speech before an American audience; "but, sincere or not, we have the power, and will make them toe the line."

bill, the third great measure of the kind to be sponsored by his party.

Before considering the nature and fortunes of this measure it will be well to look somewhat more closely into the governmental system which its authors proposed to supplant, and to summarize the arguments chiefly employed by the parties to the historic controversy. The nominal head of the government in Ireland is a dignitary known as the Lord Lieutenant, who, like the governor-general of Canada or Australia, is regarded as the direct representative of the sovereign. In earlier centuries the Lord Lieutenant actually ruled the country. But with the growth of the cabinet system in Great Britain this official, like the king himself, receded into an honorable inactivity, while the control of affairs passed into the hands of a minister, nominally his inferior, known as the Chief Secretary for Ireland. The Lord Lieutenant lives in semi-regal style in Dublin Castle, but is chiefly useful nowadays as a symbol of British authority. "A vision of half a dozen victorias with four high-steppers apiece, outriders, bright liveries, English military bands crashing out 'God Save the King' — that is the Lord Lieutenant."[1]

The true center of the government is the Chief Secretary. He is a member of the ministry of the United Kingdom, and is appointed in the same manner as other members. He is invariably also a member of the cabinet,[2] and to a large extent he guides the Irish policy of that body; nine months of every year he spends at London, and only three months at Dublin. At the same time, he is in charge of all branches of executive and administrative work in the lesser island. The government at Dublin, of which the Chief Secretary is thus the *generalissimo*, consisted in 1914 of seven main departments — agriculture and technical instruction, local government, education, etc. — and was so elaborately organized as to comprise not fewer than sixty-seven boards and other more or less distinct subdivisions. Practically all appointments were made, in the name of the Lord Lieutenant, by the Chief Secretary, including the police and the judges of both the county and higher courts. The Chief Secretary was also endowed with large powers of the purse, and with almost unlimited authority to order arrests and imprisonments.

The executive branch of the government, while thus separate from the English executive service, was mainly in English hands;

[1] B. Williams [ed.], *Home Rule Problems*, 37.

[2] Unless the Lord Lieutenant is a member, which formerly was often the case, but is not so nowadays.

although, toward the close of the nineteenth century, appointments in certain departments were given in increasing numbers to Irishmen. Furthermore, the Chief Secretary and his subordinates were not responsible to an Irish parliament or to any other organized Irish authority. Responsibility lay only to the general parliament at Westminster. Finally, the country's legislation — whether laws common to all parts of the United Kingdom or measures applicable to Ireland only — had to be enacted by this same general parliament. Irish laws were, therefore, made by a body which was mainly English, Welsh, and Scottish; although it is to be observed that Ireland was not only represented in this body, but after the great mid-century era of emigration, was distinctly over-represented, and that she therefore bore a share, and a disproportionate share, in the making of laws for England, Wales, and Scotland.[1]

All in all, the system of government was neither so bad as it was generally painted by Irishmen nor so good as Englishmen were accustomed to regard it. After the opening of the offices to natives, the introduction of merit principles, and the democratization of local government by the County Councils Act of 1898, the system was, indeed, not intrinsically bad at all.[2] It stood in need of only some changes of detail to be stamped as both economical and efficient. None the less, it was not an *Irish* government; it was not even a government that was directly responsible to Irish opinion; hence it was probably futile to expect it to satisfy the political instincts and longings of any considerable section of the Irish people.

Arguments on Home Rule. — This brings us to a summary — for that is all that space permits — of the arguments used by the two sides down to 1914 in the Home Rule controversy; although it is to be observed that no one person or group of persons would urge with equal vigor, or would necessarily support, all of the arguments advanced on either side. Disregarding hasty and irresponsible charges, prompted by bitterness and passion, Home Rule has been advocated chiefly on the following grounds: (1) The Act of Union of 1800 was passed to punish the Irish for the rebellion of 1798. It was a war measure, forced upon the native population by an unrepresentative and heavily bribed parliament, and therefore has always lacked moral validity. (2) The Irish have conclusively shown that, as a

[1] See p. 126.

[2] On the reform of local government see Williams, *Home Rule Problems,* Chap. v, and J. Clancy, *Local Government in Ireland* (Dublin, 1899).

people, they want Home Rule. From 1884, when the masses first became parliamentary electors, to 1914, eighty constituencies out of one hundred and one in which members were elected by popular vote, regularly sent Nationalist, *i.e.*, Home Rule, representatives to the House of Commons. The only formidable opposition was in Ulster, and even there the opponents were in a minority.[1] (3) Far from being a step toward the dissolution of the Empire, Home Rule would strengthen Imperial ties. The Irish had no desire for independence; they merely wanted a native parliament such as twenty-eight different parts of the Empire already had; in this demand they had the moral support of the self-governing colonies and, in general, of the English speaking world beyond seas. (4) The present system was expensive and extravagant, the per capita cost of administration in Ireland being considerably in excess of that in the other parts of the United Kingdom, and constituting a heavy drain on a poor country. (5) This present system was not responsible cabinet government, such as is the glory of the British constitution, but government by agencies — a parliament at Westminster in whose more important branch Irish representatives were outnumbered more than five to one and an executive and administrative service comprising essentially an alien governing class — over which Irish opinion could have no certain control. (6) Even under the existing régime, Ireland required a large amount of separate legislation, and it would be better if all legislative work relating exclusively to Irish affairs was in the hands of a local parliament composed of men familiar with Irish conditions. (7) Parliament at Westminster labors under an intolerable congestion of business. Relief through some form of devolution is becoming a practical necessity, and the establishment of a separate parliament for Ireland would be a logical beginning. Only in such a parliament would long-neglected Irish questions — education, housing, poor relief, railways, and the like — receive proper attention. (8) In the domain of local government, where control was transferred in 1898 from the landlords to the masses, the results have been excellent and the Irish have fully proved their legislative and administrative capacity. (9) The bulk of Ireland's population would never cease from agitation or be truly loyal until Home Rule was granted; so that the only alternative was coercion, with all the unpleasant consequences that that course entails.

Similarly summarized, the main arguments against Home

[1] See p. 292.

Rule were: (1) Home Rule never became popular in Ireland until it was linked up with the agrarian agitation, and then only because the people were made to believe that they could not get land until they had Home Rule. The land question being practically settled, little enthusiasm for Home Rule, as such, survived, — as was evidenced by the fact that the Nationalist party was supported largely by donations from Irish-Americans. The movement was kept alive principally by passion-driven agitators, and especially by politicians who hoped to govern the country if a Home Rule bill was passed. (2) The logical aim of all nationalism is independence, and while the Nationalist leaders now denied that they wanted separation, a Home Rule bill would be considered a step in this direction, and hence a beginning of the disruption of the Empire. (3) There is no true analogy between Ireland and the colonies. The latter were given separate governmental systems for geographical reasons which do not apply to Ireland. They are not represented in the Imperial parliament, whereas Ireland is. Furthermore, they are not inseparably bound up with Great Britain in their finances and in their systems of defense as is Ireland. (4) If Ireland was not "self-governing," neither was Wales, nor Scotland, nor England itself. Objectionable measures could be forced on any of these divisions of the country with the aid of Irish votes at Westminster. (5) The economic redemption of the Irish peasantry had been largely accomplished under the present system, especially through huge appropriations for the purchase of land by the tenants, to whom loans were made for long periods at low rates of interest; and if Irish administration seemed unduly expensive, it was because of the special attention which the Imperial parliament had been giving to improving Irish economic conditions. (6) The question had never — at all events since 1892 — been put squarely before the people of the United Kingdom at a general election, and there was no ground for assuming that a majority was in sympathy with the proposed legislation. (7) It had always proved impossible for Home Rulers to work out a scheme not open to serious and admitted objections from one quarter or another. (8) An insuperable difficulty arose from the division of feeling within Ireland itself — not only the opposition of the majority of business and professional people, but especially the active hostility of the large Protestant, Unionist, industrial element in northeastern Ulster which was convinced that, no matter what safeguards were set up, it would continually suffer from economic and religious discrimination at the hands of a

predominantly Catholic, agricultural Irish parliament. (9) In the great sea wars of the past Ireland has always been regarded by the enemy as providing the base for a flank attack upon England. With Ireland independent, or even in such control of its own affairs as Home Rule would involve, the difficulties and cost of Britain's naval defense would be vastly increased. For strategic purposes, the British Isles form an indivisible group, and so long as international rivalries and wars persist no readjustments of constitutional relations can be made that do not start from this fundamental fact.[1]

The Home Rule Bill of 1912. — Under the Home Rule Bill introduced by Mr. Asquith there was to be, as the unsuccessful bills of 1886 and 1893 had provided, an Irish parliament, consisting of two houses, which should meet at least once a year and should make all laws pertaining exclusively to Irish affairs and exercise a general control over Irish administration. The House of Commons was to consist of 164 members chosen for a maximum of five years in the same way that members of the lower house were then elected throughout the United Kingdom; although after three years the franchise and mode of election might be altered and a redistribution of seats, not changing the total number, might be made by the Irish parliament. The upper house, or Senate, was to consist of 40 members, with a fixed term of eight years; and whereas the first idea was that the senators should be appointed by the Lord Lieutenant with the advice of the Executive Committee of the Privy Council of Ireland, the bill was amended to provide for popular election, by provinces, under a system of proportional representation. The Lord Lieutenant, representing the king, was to continue as the chief executive. But he was to act only on the advice of the Executive Committee, composed of the heads of the Irish departments, who were to be responsible, singly and collectively, to the Irish House of Commons; in other words, Ireland was for the first

[1] The arguments for Home Rule are cogently presented in J. McCarthy, *The Case for Home Rule* (Chatto, 1887); S. Gwynn, *The Case for Home Rule* (Dublin, 1911); B. Williams [ed.], *Home Rule Problems* (London, 1911); and S. G. Hobson, *Irish Home Rule* (London, 1912). Recent statements, of charming literary quality, but representing the ardor of Irish nationalism rather than the critical handling of materials, are A. S. Green, *Irish Nationality* (London, 1911), and F. Hackett, *Ireland: a Study in Nationalism* (New York, 1918). The classic constitutional arguments opposed to Home Rule are A. V. Dicey, *England's Case against Home Rule* (London, 1886), and *A Leap in the Dark* (London, 1893, new ed. 1911). The general arguments in opposition are set forth in P. Kerr-Smiley, *The Peril of Home Rule* (London, 1911); S. Rosenbaum [ed.], *Against Home Rule: the Case for the Union* (London, 1912); and A. W. Samuels, *Home Rule Finance* (Dublin, 1912).

time to have a real cabinet system. Like the bill of 1893, and unlike that of 1886, Ireland was to retain representation in the House of Commons at Westminster, her quota being reduced, however, from 103 to 42. The constituencies for these representatives were to be formed by merging boroughs and counties and disfranchising the universities.

It was specially stipulated that "the supreme power and authority of the Parliament of the United Kingdom" should "remain unaffected and undiminished over all persons, matters, and things" in Ireland. Furthermore, the power of the Irish parliament "to make laws for the peace, order, and good government of Ireland" was limited by the requirement (1) that the body should not have power to make laws "except in respect of matters exclusively relating to Ireland or some part thereof," and (2) that it should not legislate at all on war or peace, the army, the navy, extradition, treason, naturalization, navigation, foreign trade, coinage, weights and measures, trade marks, copyrights, patents, the collection of taxes, the constabulary, the old age pension acts, and various other "reserved" subjects. All bills were to be subject to the royal veto, exercised through the Lord Lieutenant.[1] A section of the measure to which much importance was attached forbade the Irish Parliament to "make a law so as either directly or indirectly to establish or endow any religion, or prohibit the free exercise thereof, or give a preference, privilege, or advantage, or impose any disability or disadvantage, on account of religious belief or religious or ecclesiastical status . . . ." Long and complicated sections of the bill undertook to define the new financial arrangements between the two countries. In general, Ireland was to levy her own taxes; but for a time, at all events, they were to be collected by the Imperial Treasury and paid into the Imperial Exchequer.

The measure was supported by the Liberals, by the Labor party (which cared little for Home Rule as such, but wanted the question settled so that social and industrial problems might again receive systematic attention), and by the bulk of the Nationalists under the leadership of Mr. Redmond, although a small group of Independent Nationalists, led by Mr. William

[1] The effect of the constitutional controversies of 1909–11 is seen in the provision that the Senate should not reject any bill dealing only with "the imposition of taxation or appropriation of revenue or money for the services of the Irish government," and also in the provision that if the House of Commons should twice pass, and the Senate twice reject, any bill in successive sessions, the two houses might be convoked in joint session by the Lord Lieutenant with a view to making final disposal of the measure by majority vote.

O'Brien, opposed the bill because of certain of its provisions, relating chiefly to finance. Conservative opposition was, if possible, more bitter than in 1886 and 1893, and on the same principal grounds, namely, that the measure would lead to the persecution of the Protestant minority in Ireland and to the disruption of the Empire. The most determined and spectacular resistance came from the Protestant, Unionist portions of the province of Ulster.

The Bill before Parliament and the Country: the Ulster Protest. — Ulster became the seat of a considerable Protestant population in the early seventeenth century, when the subjugation of the north was completed by wholesale confiscations of Irish lands and by the settlement there of a hardy race of emigrants from the adjacent portions of England and Scotland. Thenceforth there were in the island, as a recent writer has said, two separate entities, almost two separate nationalities. "One was largely Celtic, Catholic, politically backward, and economically depressed, ignorant, poor, exploited by aliens, with hopeless outlook and fierce hatred for the despoiler. The other was Anglo-Saxon and Protestant, Episcopalian, Presbyterian, and dissenter, large proprietors or substantial artisans or farmers, under British authority ruling, or allied with the ruling class, always proud, sometimes prosperous and successful."[1] The liberalized policy of the English government in the nineteenth century brought substantial improvement to both parts of the country. But Ulster — especially the highly industrialized sections around Belfast — was drawn by its economic as well as by its racial interests into closer relations with England, while the remaining provinces moved rather in the opposite direction; and the religious and cultural differences were in no degree ameliorated.

From the earliest mention of Home Rule, the Protestants of Ulster were apprehensive and hostile. They opposed the bill of 1886, and in 1893 they resolved in convention to refuse to recognize the authority of an Irish parliament if one was ever set up. When therefore, in 1911, the Asquith government made known its intention to introduce a new bill on the subject, the Ulstermen under the leadership of Sir Edward Carson forthwith began to organize opposition and to declare that they were prepared to go to extreme lengths, if necessary, to avoid subjection to a Catholic parliament — even to the setting up of a separate provisional government. Advocates of Home Rule did not fail

[1] Turner, *Ireland and England*, 294.

to point out that in four, and possibly five, of the nine counties composing the province Home Rulers were in a majority;[1] and that the census of 1911 showed that, in the province as a whole, the Protestants of all denominations outnumbered Catholics by rather less than 200,000;[2] and they urged that the fears of the Ulster men were the product of ancient prejudice rather than of honest study of the proposed legislation. But the dissentients insisted none the less emphatically that under any scheme of separate government for Ireland they were in danger of economic subjection and religious oppression. Countenanced, and even openly encouraged, by the Unionists in England (who held that this was no ordinary political issue, to be decided entirely by the votes taken at Westminster), they held excited mass meetings, signed covenants never to submit to an Irish parliament, drew up plans for a provisional government, and made active preparations for a war of resistance.

It is impossible to narrate here the dramatic events, or to describe the anxiety of patriotic men of all parties, during the two and one half years following the first appearance of the Government's bill. Confident of the righteousness of its policy, the ministry allowed no amount of threats, or of armed preparations, to turn it from its purpose — not even when the Unionist leader, Bonar Law, solemnly declared that if the Ulstermen were forced into open defiance of a measure passed under the Parliament Act without farther appeal to the electorate, and by the dictation of a Nationalist vote which in the Unionist view had always been disloyal to the Empire, any attempt to coerce Ulster could only mean civil war, and a war that could not be confined to Ireland. Twice in the early months of 1913 the bill was passed by the House of Commons, and each time it was promptly and overwhelmingly rejected by the House of Lords.[3] The Unionists repeatedly challenged the Government to submit the question to the people at a general election, or in lieu of that, to make provision for a referendum on this single issue. The reply was that

[1] The counties of Ulster, Armagh, Antrim, and Down are overwhelmingly Unionist; Cavan and Donegal are overwhelmingly Nationalist; Derry, Fermanagh, Monaghan, and Tyrone are more evenly divided.

[2] Protestants, almost 900,000; Catholics, 700,000. Ulster's thirty-one representatives in the House of Commons after the general elections of December, 1910, included sixteen Unionists, thirteen Nationalists, one Independent Nationalist, and one Liberal.

[3] Passed by the House of Commons (367 to 257) January 16, and rejected by the House of Lords on the second reading (369 to 69) January 30. Passed again by the lower house (352 to 243) July 7, and rejected by the upper chamber (302 to 64) July 15.

the question had already been submitted. Conferences between representatives of the two major parties came to naught; the Nationalists reiterated their determination to accept no compromise; and on March 5, 1914, the bill was introduced for the third time. Four days later, however, Mr. Asquith came forward with a compromise, similar to one proposed by Mr. Chamberlain in 1886. The plan was to exempt the counties of Ulster — in so far as they should by a referendum demand it — from the operation of Home Rule, for a period of six years, whereupon they should automatically come under the terms of the act. The Unionists and Ulstermen disliked the scheme, because of the rigid time limit; although Unionist opposition was somewhat mollified by the intimation from Liberal quarters that before the end of the six-year period some scheme of federal government for the entire kingdom might enable Ulster to secure permanent autonomy. On the other hand, the Nationalists roundly opposed any division of the country, and especially one which would detach the counties of largest tax-paying capacity.

On May 21 the premier announced the Government's intention to introduce an Amending Bill which would to some extent modify the main measure before it was put into effect; and four days later the Home Rule Bill passed its third reading in the House of Commons by a vote of 351 to 274. Manifestly, Home Rule was about to become law, under the terms of the Parliament Act, without the assent of, and against the will of, the upper chamber. The Amending Bill, introduced in the House of Lords, June 23, embodied the premier's proposals of March 9; and the issue shifted to the principle and the details of exclusion. On July 21 — when thirty thousand Ulster Volunteers were drilling by day and night, and in the south the Nationalist Volunteers were putting still larger numbers of men into the field to resist the segregation of the Ulster provinces — the king took the unusual step of calling the Liberal, Unionist, and Nationalist leaders into conference at Buckingham Palace, in the hope that some agreement might be reached; but the meeting proved fruitless. Meanwhile the House of Lords had passed the Amending Bill in such a form as to exclude all Ulster indefinitely from the operation of Home Rule. The altered measure then went to the House of Commons and was under consideration there when, suddenly, the political scene was completely changed by the outbreak of the Great War. Political animosities were buried overnight, and Parliament turned its attention to legislation deemed immediately necessary, leaving ultimate settlements to a more

favorable day. As to Ireland, the Amending Bill was dropped and the Government, declaring that it would never impose Home Rule on Ulster by force, promised that the Home Rule Act should not take effect for a year (or until the end of the war), and pledged the passage meanwhile of some kind of amending measure. Amid dramatic scenes, this program was accepted in both houses; and on September 17, 1914, the long-waited Government of Ireland Act received the royal assent.[1]

[1] On the Irish question since 1914 see pp. 316–324. The Home Rule Bill of 1912 is discussed in W. T. Laprade, "Present Status of the Home Rule Question," in *Amer. Polit. Sci. Rev.*, Nov., 1912, and H. Spender, *Home Rule* (London, 1912). The position of Ulster is described in Turner, *Ireland and England*, 293–311. For an able Unionist exposition see E. W. Hamilton, *The Soul of Ulster* (New York, 1917). Among useful articles are E. Childers, "Home Rule in Parliament," in *Contemp. Rev.*, Dec., 1912; and A. G. Porritt, "The Irish Home Rule Bill," in *Polit. Sci. Quar.*, June, 1913.

CHAPTER XVII

MISCELLANEOUS PARTY ISSUES

Constitutional Questions. — Leaving out of account questions pertaining to foreign relations and to the armed forces of the nation, which in the main are discussed and decided on a non-partisan basis, three groups of issues chiefly furnished fuel for controversy between the major parties during the decade preceding the war. The first consisted of questions of a constitutional nature; the second, of questions of an economic character; and the third, of questions of a broadly social bearing. Few, if any, of the issues to be mentioned under these heads have been settled. The war crowded some out of the public attention; it increased the urgency of others; all will loom up again, perhaps in new guises, but demanding — along with the scores of intricate problems raised by the war itself — thoughtful consideration and candid discussion by the leaders and members of all party groups.

Of constitutional questions, three of chief importance have already been duly considered, namely, the reform of the House of Lords,[1] the reconstruction of the electoral system,[2] and Irish Home Rule.[3] The first has been preëminently a party question. The impetus of the reform movement was supplied by the desire of the Liberals to end the intolerable situation caused by the perpetual dominance of the upper chamber by the Unionists. The Unionists themselves, perceiving that changes were inevitable, proposed various plans for the reconstitution of the chamber on a more popular basis. But the Liberals preferred to get closer to the root of the matter by limiting the power of the House of Lords to obstruct legislation carried in the lower chamber. This they did in the Parliament Act of 1911. Circumstances have never been favorable since 1911 for the farther action promised by this measure with a view to popularizing the upper house. But the question remains; and, notwithstanding the agreement of the parties upon the general ends to be sought, there is likely to be sharp controversy over means and methods whenever the subject is taken up.

[1] See pp. 146–261. [2] See pp. 124–139. [3] See pp. 281–295.

Throughout the decade the problem of electoral reform absorbed increasing attention. It was not wholly a party question; upon the enfranchisement of women, for example, neither party was able to take a clear stand. But the Liberals were interested mainly in manhood suffrage and the abolition of the plural vote; their opponents talked most about a redistribution of seats. As has been explained, the stress of war unexpectedly forced a general overhauling of the electoral system. To a degree, the task was carried out on non-partisan lines. On certain matters, however — notably a plan to introduce the principle of proportional representation—party controversy flared up in a fashion to jeopardize the entire project. This plan of proportional representation, to which the Unionist majority in the House of Lords is deeply attached, is likely to become a leading issue between the parties. Even the suffrage is not entirely settled. The National Union of Woman Suffrage Societies has officially announced its purpose to work for the lowering of the age qualification for female voters in parliamentary elections from thirty to twenty-one, thus establishing full equality with men. Inasmuch as this would mean that woman voters would be in a majority throughout the country by about two millions, there will be determined opposition. The question may or may not take on a party aspect.

Incidental mention has been made of the referendum as a political issue. In both parties the idea has slowly developed that Parliament should refrain from drastic changes in the governmental system unless it has a mandate from the nation to make them. From this idea it is but a step to the suggestion — which was first offered officially by Mr. Balfour as leader of the Opposition in the House of Commons during the crises of 1910 — that *all* great questions shall be referred to the electorate, as a matter of course, and by some fixed process. The Unionist party as a whole has never taken a stand for the referendum as applied to ordinary legislation, but is firmly committed to it as applied to constitutional questions. Individual Liberals think well of the plan; but the party as a whole is not favorably inclined. The difference between the parties on the point is perhaps one of degree rather than of principle.[1]

Tariff and Taxation. — Of economic questions which became party questions in the decade before the war, three were chiefly important: tariff reform, including colonial preference; taxa-

[1] H. W. Horwill, "The Referendum in Great Britain," in *Polit. Sci. Quar.*, Sept., 1911.

tion; and land reform. The tariff question arose out of a reaction which set in among the Unionists a quarter of a century ago against the prevailing system of free trade. As has been pointed out, protective tariffs were abolished in England by a series of measures dating from the repeal of the Corn Laws in 1842–49, and carried mainly by the Liberal party.[1] Some interests which stood longest by the protective principle never really underwent a change of heart; and toward the close of the last century the decline in agricultural prices and in industrial profits — coupled with the solitariness of the position which Great Britain as a free-trade nation found herself occupying — suggested to many people that the free-trade system ought to be abandoned. As has been stated, the Conservative National Union several times passed resolutions at its annual conferences favorable to a system of preferential tariffs, although without tangible result.[2] In 1903, Joseph Chamberlain, a leading member of the Unionist cabinet, came out for a tariff system, with two main features: (1) duties on imported foodstuffs, so arranged as to give the products of the British colonies an advantage in rates over those of foreign countries, and (2) duties on imported manufactures to protect British industries against the "unfair competition" of foreign industries. Under this plan, it was urged, the rich would profit by the reductions of direct taxation made possible by the increase of revenue; while the poor, if they should be made to contribute more heavily to the state through indirect taxation — which, however, they were assured would not be the case — would derive more than an offsetting advantage through more steady employment, higher wages, and the old-age pension laws and other social legislation to which the increase of revenues would lead. It was argued, farther, that British agriculture, long depressed, would profit from the protection given it, and that by adding to the political ties already subsisting between the colonies and the mother country other powerful ties of an economic nature, the security and perpetuity of the Empire would be freshly assured.

The scheme attracted wide attention. Many of the cleverest of the younger politicians and journalists of the Unionist party declared for it, as did several economists of the first rank. In midsummer, 1903, a Tariff Reform League began to flood the country with pamphlets, and later in the year Mr. Chamberlain returned to private life with a view to the more effective prosecution of the campaign upon which he was now resolved. The

[1] See p. 243. [2] See p. 272.

cabinet was divided, even after four uncompromising free-trade members withdrew from it. The premier, Mr. Balfour, sought to assume middle ground by declaring himself " a reasonable free-trader " and labored hard to avert the threatened disruption of his party. From October, 1903, to January, 1904, Chamberlain carried on an exceptionally vigorous speaking campaign in defense of his project, and he succeeded in convincing large numbers of hearers in all sections of the country. At the beginning of 1904 the Tariff Reform League created a non-official Tariff Commission of fifty-two members, which was instructed to make an exhaustive study of all questions and conditions pertinent to the general problem. After more than five years of work, this commission submitted a series of detailed reports; and, while the entire enterprise was carried through by partisans of the cause, it has been generally admitted that the materials brought together, if not the conclusions reached, are entirely trustworthy. The commission's findings corroborated the arguments of the reformers, and its recommendations were in general harmony with Chamberlain's proposals.

Meanwhile the injection of the issue into politics had produced important results. The Unionists, both inside and outside of Parliament, were sharply divided upon it, and Mr. Balfour's government was never in a position to give the subject a place in its official program. In this situation the Liberals found their opportunity. Almost unanimously opposed to the suggested departure, they eagerly assumed the rôle of defenders of England's " sacred principle of free trade " and pressed with telling effect their appeal to the working classes in behalf of cheap bread. The tariff reformers denied that their proposal looked to a general reversal of fiscal policy, but in the view of most people the issue was squarely joined between free trade and protection as national systems. In December, 1905, the Balfour ministry retired, and at the general election which shortly followed the Liberal government of Campbell-Bannerman achieved a victory of overwhelming proportions. From 1905 to 1915 the Liberals and their allies, the Irish Nationalists and the Laborites, were continuously in power, and there was no chance for a protectionist measure to receive favorable consideration within official circles. Throughout the country, however, the tariff reform propaganda went on, with Chamberlain (although in ill health from 1906) still, until his death in 1914, its chief inspirer and adviser; and its effectiveness was such that the mass of the adherents of Unionism were gradually won over and the pro-

posals were fully incorporated in the program of the party.[1] To a considerable extent, the readjustments of taxation undertaken by the Liberals in the Finance Bill of 1909 were conceived as an alternative to tariff reform; and it was, in part at all events, on that account that those readjustments encountered the almost unanimous opposition of the protectionists. Throughout the controversies of 1909–11 the Liberals continually bracketed the maintenance of free trade with the absolute control of the House of Commons over finance. But the Unionists stood by protectionism and colonial preference with substantial unanimity. In 1914 it was still to be presumed that, if returned to power, they would make up their first budget in accordance with their new — or, more accurately, their revived — faith. At all events, it was clear that, far from having succeeded in the effort to convert their European neighbors to free trade, the English people had themselves become sharply divided upon the merits of the policy.

It has been remarked by a leading writer that the Unionist party is perhaps chiefly to be distinguished from its leading rival by its benevolent attitude toward certain great interests, of which one is the large landholders.[2] To defray the costs of army reorganization, naval construction, old age pensions, public education, and other great enterprises, vast increases of revenue long ago became imperative. The general fact was recognized by both parties, but upon the mode of obtaining the additional money they were sharply disagreed. The Unionist idea, as just stated, was to tax imports, thereby obtaining revenue while also protecting English agriculture and industry. The Liberal idea was rather to employ income taxes rising in rate as the income grew larger, to make new valuations of land and impose increased taxes upon these values (especially upon unearned increments), and to lay heavy imposts upon inheritances, as well as on motor cars, spirits, and other luxuries — in short, to throw the tax

[1] In a speech at Edinburgh, January 24, 1913, Bonar Law, who succeeded Balfour as leader of the Unionist party in 1911, declared that the policy of tariff reform was now supported by the membership of the party with a unanimity which never before had existed. It is to be observed, however, that, through fear of the opposition of the poorer industrial classes, a large section of the party had weakened on the question of food taxes, and that in deference to a memorial on the subject presented to him by prominent party members Mr. Law promised on this occasion that, should the Unionists be returned to power, food duties would not be imposed until the people should have been consulted at a general election. The Tariff Reform League insisted that while the party might postpone food duties it must not abandon them. The progress of the cause is surveyed in L. C. G. Money, "Tariff Reform: Ten Years After," in *Contemp. Rev.*, Mar., 1913.

[2] Lowell, *Government of England*, II, 120.

burden, in far greater measure than hitherto, upon the rich, and especially upon the landlords. In successive budgets, from 1909 to 1914, the Liberal ideas were carried out extensively, although not completely; and at the outbreak of the war the parties were as far apart as ever upon the justice and expediency of what had been done. The Unionists still looked to customs duties as a more desirable source of revenue.[1]

Land Reform. — A closely related question which was on the point of becoming an important party issue when the war relegated it to temporary obscurity is that of land reform. The land situation in recent decades has presented many unsatisfactory features: shortly before the war, only about twelve per cent of the arable acreage was cultivated by owners; most of the remainder, together with a vast amount of undeveloped land, belonged to rich landlords, who often owned whole villages; over sixty per cent of the adult agricultural laborers were receiving less than 18*s*. ($4.50) a week; in a half century the rural population had declined by more than a half million; although formerly self-sufficing, the country was producing not more than one ninth of the wheat consumed within its borders. The problems arising from this situation had long commanded the attention of economists and other thinking men, and many remedies had been suggested: public encouragement of "allotments" of land in small areas by proprietors or by local authorities to wage-earning laborers; provision of "small holdings," to be paid for by the occupiers in installments; extension of facilities of rural credit; development of technical agricultural education; extension of coöperative enterprise; the unionizing of agricultural laborers. More controversial were certain other proposals, especially (1) the nationalization of the land, (2) the imposition of protective duties on imported foodstuffs, and (3) more stringent rating and taxation of land values. The first of these propositions, contemplating the total abolition of the private ownership of land, never became more than an academic question; although its adoption, in whole or in part, was advocated not only by professed socialists, but by other radicals, in both public and pri-

[1] On the issue of tariff reform see Jeyes, *Joseph Chamberlain*, Chap. xix; C. W. Boyd [ed.], *Mr. Chamberlain's Speeches* (Boston, 1914), II; A. C. Pigou, *Protective and Preferential Import Duties* (London, 1906); W. J. Ashley, *The Tariff Problem* (2d ed., London, 1910); and S. Walter, *The Meaning of Tariff Reform* (London, 1911). Chamberlain's earlier speeches on the subject are brought together in a book entitled *Imperial Union and Tariff Reform* (London, 1903). Cf. C. D. Allin, "Federal Aspects of Preferential Trade in the British Empire," in *Amer. Polit. Sci. Rev.*, Aug., 1918.

vate life.[1] The proposal relating to land values looked especially to the taxation of undeveloped land in such a manner that owners would be induced or driven to throw it upon the market and thereby increase the opportunity for the laying out of small holdings.

In general, the Unionist idea was to stimulate agriculture and raise rural wages by protective duties on imported foodstuffs, while the Liberal plan was to reach these ends by direct and drastic reconstruction of the conditions of land ownership and rural employment. During the earlier portion of the Liberal decade preceding the war, the Government gave the subject increasing attention. A Small Holdings and Allotments Act of 1907 enabled some thrifty persons to acquire and gradually pay for small tracts of ground, and the controverted Finance Act of 1910 introduced new and radical plans of rating and taxing. After 1910 the subject received new prominence, especially at the hands of the Chancellor of the Exchequer, Mr. Lloyd George. In 1912 a semi-official Land Enquiry Committee was assigned the task of investigating wages, hours, housing, game laws, allotments, and conditions of land purchase and tenure; and in October, 1913, this "Acland Committee" submitted an extensive report on rural land conditions.[2] Taking as a basis the data thus brought to light, Lloyd George formulated a program of reform directed to two main ends: (1) the betterment of the living conditions of the rural population; and (2) the increase of agricultural production. The first was to be attained by direct and immediate action, the second more slowly and perhaps largely as a consequence of the amelioration of rural labor conditions. In the first place, it was proposed to establish a new ministry — a Ministry of Lands — to have jurisdiction in all matters pertaining to both rural and urban lands.[3] Under the Minister of Lands local commissions were to be set up, with power to purchase (at prices determined by themselves) land needed for small holdings, reclamation, and afforestation, and with power, also, to inquire into evictions, to compel compensation for improvements, and, under certain conditions, to fix rents. In the second place, it was proposed, in accordance with the recommendations of the Acland Committee, to give the agricultural laborer the protection of a minimum wage law, the minimum

[1] The plan is forcefully defended in M. Fordham, *Mother Earth* (London, 1908).

[2] *Report of the Land Enquiry Committee*, Vol. I, Rural (London, 1913), Vol. II, Urban (London, 1914).

[3] To the new ministry were to be transferred the functions of the Board of Agriculture, and of a number of other existing administrative agencies.

wage to be determined for different localities by the commissions. The commissions were to have power, farther, to regulate the hours of labor. Finally, a national survey of housing conditions was to be instituted, and the state was to proceed, using the reserve insurance funds, with the building of about 125,000 cottages which, together with garden plots, should be disposed of to laborers at an " economic rent."

These policies were given out as the product of prolonged cabinet deliberations; in other words, they were promulgated as a part of the general ministerial program. As such, they were attacked by the Unionists, although opposition centered upon details rather than fundamentals and was, withal, half-hearted. Discussion was cut short by the war, but not until it had thrown into sharp relief the two rival programs of agrarian reform — the Unionist proposal to improve agriculture by the taxation of imported foodstuffs and the Liberal plan to reach the same end by the reconstruction of the conditions of land ownership and of rural labor. The problem promised to be one of the most serious that England would have to face in other years; and it seemed likely, whenever taken up again, to become a political issue, since the landholding interests are closely identified with the Unionist party.[1]

Social Questions: Status of the Established Church. — A leading tenet of modern liberalism is the separation of church and state. The principle has been carried completely into effect, however, in only a few countries; and Great Britain is not one of them.[2] The official connection between church and state is indeed much less close in contemporary Britain than it was in former centuries. Yet it is in many ways influential on the nation's affairs, and its continuance has become a political question of considerable interest and importance.

The Church of England is an established church in that the state recognizes and deals with it as the historic national church of the English people, and hence as an integral part of the constitution of the realm. The doctrine of the Church, embodied in the Thirty-Nine Articles, was formulated by the ecclesiastical

[1] On the land problem see P. Alden, *Democratic England* (New York, 1912), 238–263; G. Parker, *The Land, the People, and the State* (London, 1911); A. H. H. Mathews, *Fifty Years of Agricultural Politics* (London, 1915); C. Turnor, *The Land and the Empire* (London, 1916); J. Collings, *Land Reform* (London, 1906); W. H. R. Curtler, *Short History of English Agriculture* (Oxford, 1909); W. R. D. Adkins, "Liberalism and the Land," in *Contemp. Rev.*, Apr., 1913; B. S. Rowntree, "Rural Land Reform," *ibid.*, Nov., 1913.

[2] It is to be remarked, however, that there is no longer an established church in any of the British self-governing dominions.

assemblage known as Convocation, but was given final authority by act of Parliament in 1671. Similarly, the Prayer Book, containing the ritual, was adopted by the Act of Uniformity of 1662; and no change can be made in either doctrine or ritual except by statute. Organization, also, is determined, or confirmed, by the state. Thus, acts of Parliament formerly specified that England and Wales should be divided into the two provinces of Canterbury and York, each presided over by an archbishop, and that the one should contain twenty-seven sees and the other ten. Acts of Parliament — the Welsh Church Acts which took effect March 31, 1920 — also withdrew from the province of Canterbury the whole of Wales and Monmouthshire, leaving but twenty-three sees in the southern province.[1] Furthermore, the clergy are appointed, directly or indirectly, by the government. In form, a bishop or archbishop is still elected by the dean and canons of the cathedral (or bishop's) church; but the *congé d'élire* from the crown, which authorizes the election, is accompanied by a "letter missive" designating the person to be chosen. The appointment is really made by the prime minister. Deans are commonly appointed in the same way, and canons frequently so. The archdeacons and rural deans who assist the bishop are usually appointed by him, and the parish curate, rector, or vicar, although previously ordained to the priesthood by a bishop, usually owes his selection for a post to the crown, the lord chancellor, a bishop, a university, or some other person or body, ecclesiastical or lay, that has acquired the right to "present to the living."[2]

The Church, therefore, is in the curious position of an organization that does not determine its own doctrine, make and revise its own ritual, fix its own structure and form of government, or even select its own officers. It is not even a body corporate, and hence cannot, as an organization, hold property — although it contains any number of corporate bodies with full property-owning powers. In the Convocations of Canterbury and York, it has two quasi-legislative bodies; but they can do nothing of importance without the consent of the crown or of Parliament or both.[3] There are still bishops' and archbishops' courts; but

[1] See p. 258. The archbishop in each case has charge of a see; so that the number of bishops in the two provinces is, respectively, twenty-two and nine.

[2] The right to present to the living is legally termed an "advowson." See Lowell, *Government of England*, II, 365–367.

[3] The powers of the Convocations are regulated by the Act for the Submission of the Clergy, passed in 1533. Each body consists of two houses. The upper contains the archbishop and bishops; the lower is made up of the deans, together with certain proctors and other lesser representatives.

their earlier jurisdiction over matrimonial and probate cases was long ago lost to the secular tribunals and their theoretical right to excommunicate, and even imprison, laity as well as clergy for certain ecclesiastical offenses is, in fact, never exercised.

The financial support of the Church is drawn from three principal sources: rents, tithes, and voluntary offerings. In one way or another, large quantities of land have passed into the hands of the various ecclesiastical officers and bodies, whose tenure is, in most cases, perpetual. The rents and other revenues go mainly to the support of the appropriate bishops, deans, canons, rectors, or vicars. The parish clergy derive by far the larger part of their income from tithes, which, by a long series of developments, have come to be rent charges apportioned upon all the lands liable in the parish and computed on the difference between the average price of wheat, barley, and oats in the seven years preceding the levy and the price of those commodities in the first year after the passing of the Tithe Commutation Act of 1836. It is to be observed, however, that not all of the revenue from tithes goes to the clergy; and in the opinion of impartial writers the tithes themselves cannot be regarded as a state tax for the support of religion.[1] The Church no longer receives national subsidies at the hand of Parliament; speaking broadly, it is not supported by taxation at all.

The Question of Disestablishment. — Much controversy has centered around the Church and its privileges in past centuries, and a demand has often been made for disestablishment. In recent times the change has been advocated by certain high-church elements that would prefer to get the Church out from under state control. In the main, however, the plan is urged by the Congregationalists, Baptists, Presbyterians, Quakers, Methodists, and other Nonconformist bodies, which, shortly before the opening of the present century, drew together in a Free Church Federation pledged to uphold the interests of the Dissenters as against the Established Church and to support a general program of disestablishment. The arguments for disestablishment[2] run somewhat as follows: (1) the privileged position of the Established Church is unjust to other religious communities, which in the aggregate count practically as many

[1] Lowell, *Government of England*, II, 375.

[2] Theoretically, the question of disestablishment is separable from that of disendowment. But if the one change were made it would almost certainly involve the other.

adherents as the Established Church; (2) the endowments of the Established Church are historically national property, whose yield of six million pounds a year ought to be set free for national purposes; (3) the inclusion of the bishops in the House of Lords, and the monopoly of public honors enjoyed by the Anglican clergy, is unfair to the clergy of other denominations; (4) establishment maintains in existence a class which, being itself privileged, is the natural ally of privilege and monopoly, and an obstacle to political and social reform; (5) disestablishment would remove a barrier to the cordial coöperation of religious bodies in the interest of moral and social progress; and (6) liberation from state control would give the Church new vigor and spirit. On the other side it is urged (1) that disestablishment would lead to disendowment, and disendowment is pure confiscation, since the property of the Church is not national property, but is trust property, given to the Church as such for purely religious purposes; (2) that disendowment, by depriving the Church of a large part of its income, would impose limitations upon its activities, to the detriment of the morals and religious life of the nation; (3) that disestablishment would be so keenly resented by Churchmen that its effect would not be to promote harmony among religious bodies, but quite the reverse; (4) that the presence of the bishops in the House of Lords is not necessary to the continuance of the Established Church; and (5) that establishment does not involve religious inequality, since no person is prevented from following his own religious inclinations.

As an organization, the Church takes, and can take, little part in politics; as a recent writer has remarked, the capacity of the Church for corporate action of any sort is very limited. The Anglican clergy, however, as a profession, are almost solidly Unionist in politics, and they believe that their own interests and the interests of the Church which they serve are bound up absolutely with the fortunes of the Unionist party. On the other hand, practically all of the Nonconformist clergy, and most Nonconformist laymen, are adherents of Liberalism; and the local councils of the Free Church Federation do not hesitate to take an active part in both parliamentary and local electoral campaigns. The religious basis of party alignment and activity was greatly accentuated by the Education Act of 1902 and the controversies centering around its enforcement.[1]

Disestablishment in Wales. — After the enactment of disestablishment and partial disendowment for Ireland in 1869, dis-

[1] See p. 310.

establishment as a party issue was agitated in relation chiefly to Wales. The pre-war Liberals were on record as favoring the disestablishment of Presbyterianism in Scotland, and strong elements among them demanded disestablishment of Anglicanism in England.[1] Wales, however, offered the best point of attack, and Welsh disestablishment figured in the program of the National Liberal Federation practically from the beginning of that organization in 1877. A bill on the subject was before the House of Commons when the Rosebery ministry resigned in 1895, and another, introduced in 1909, was withdrawn during the controversy over the Lloyd George Budget. The arguments for the change have been principally: (1) the Nonconformists outnumber the adherents of the Church of England in the proportion of three to one; (2) the Church in Wales was an "alien church, out of touch with the people, and not vigorous or efficient;" and (3) disestablishment was ardently desired by the bulk of the people, one evidence being the regular return of a majority of Liberal members to Parliament. The Anglican, Unionist replies to these contentions were, chiefly: (1) the Church in Wales was the largest single religious body in the principality;[2] (2) the Church was no more "alien" in Wales than in England, having existed there long before the present relations between England and Wales were established; (3) the Church in Wales was an integral part of the general English Church, whose vitality would be impaired by the change; (4) in their own organizations the Nonconformists do not recognize the division between England and Wales; and (5) there was no evidence of an active general demand from Wales for disestablishment other than such as was, on insufficient grounds, deduced from the fact that a large majority of her parliamentary representatives were in favor of this policy.

Until 1911, it was always to be presumed that any disestablishment bill would fail because of the hostility of the Unionist House of Lords. The Parliament Act, however, opened up a way for the enactment of controversial measures without the assent of the upper chamber, and in 1912 the Government

[1] In 1907 the House of Commons, stirred by the rejection of the Education Bill of 1906 by the House of Lords, passed a resolution by a vote of 198 to 90 declaring it to be the sense of the British nation that the Church should be disestablished in England as well as Wales.

[2] A royal commission appointed in 1906 to study the subject reported the number of Established Church communicants at 193,081, as compared with 175,174 Congregationalists, 170,167 Calvinistic Methodists, and 143,000 Baptists. The total Nonconformist membership was reported as 550,280.

brought in a Welsh Disestablishment Bill, drawn on the same lines as the measures of 1894 and 1909. The Lords took the course that was expected. But the bill (providing for disestablishment in the English county of Monmouth as well as in Wales) was passed in the lower house in three successive sessions, and in 1914 it became the first non-financial measure to be placed on the statute book under the terms of the Parliament Act. The question of disestablishment in England and Scotland remained for later consideration; and after prolonged controversy actual disestablishment in Wales and Monmouthshire was postponed until after the war. Somewhat amended by a Temporalities Bill of 1919, the Disestablishment Act took effect March 31, 1920.[1]

The Education Question. — An issue that sharply divided the parties during the decade before the war, and that drew the principal religious bodies deeper into politics than at any earlier time, was public education. Paradoxically, the education controversy had little to do with education *per se* — with such questions as how the children should be taught, what subjects they should study, and when instruction should begin and cease — and still less with matters of a more purely pedagogical nature. The question that was, and still is, of political importance was rather that of the status, and especially the financial support, of the great number of elementary and secondary schools operated under the auspices of the Established Church; in other words, it was merely a phase of the conflict between the Church and Nonconformity.

In England, as everywhere else, provision of facilities for education was left, in the Middle Ages and far down into modern times, to the Church and to private philanthropy. Indeed, England was the last of the leading countries of western Europe in which the state recognized and accepted responsibility in this

[1] The historical development of the Church of England is outlined in Jenks, *Government of the British Empire*, Chap. xii. The Church's general position and organization are described in Lowell, *Government of England*, II, Chaps. li-lii. A good short history of the Church by a high-churchman is H. O. Wakeman, *Introduction to the History of the Church of England* (London, 1896). The classic argument against disestablishment is Lord Selborne, *Defence of the Church of England against Disestablishment*. The subject is also discussed brilliantly in E. A. Freeman, *Disestablishment and Disendowment*. The case for disestablishment in Wales is argued in P. W. Wilson, *Welsh Disestablishment* (London, 1912), and A. Dell, *The Church in Wales* (London, 1912). See also Dean of Durham, "Church and State in England," in *Edin. Rev.*, Oct., 1916. The general problem of church and state is surveyed historically and philosophically in J. N. Figgis, *Churches in the Modern State* (New York, 1913), and the earlier phases in England are covered in H. M. Gwatkin, *Church and State in England to the Death of Queen Anne* (London, 1917).

direction. Parliamentary grants in aid of elementary education began only in 1833, and not until 1870 was an effort made to meet systematically by state aid the glaring deficiencies in the number, quality, and distribution of schools. Meanwhile the provision of schools was left, in the main, to two great religious organizations — the National Society for Promoting the Education of the Poor in the Principles of the Established Church, founded in 1811, and its rival, the Nonconformist British and Foreign School Society, set up in 1814. The Forster Education Act of 1870 was intended, as its author told the House of Commons, to " complete the voluntary system and fill up the gaps." It divided the country into school districts and required that in every district in which school facilities were found to be inadequate, the rate-payers should elect a school board, which should have power to establish new schools, to levy rates for their support, and to compel attendance. In succeeding years, large numbers of school boards were thus constituted, and many " board " schools were established. England, therefore, had, after 1870, two main kinds of schools: (1) board schools, which participated in the annual parliamentary grants, but were supported chiefly by local rates and tuition fees, and (2) " voluntary " schools, which also shared in the grants of Parliament, but lived mainly by private beneficence, together with tuition fees. The board schools were under public control; the voluntary schools, under denominational — in most cases Church of England — control. The latter were entitled to no support from the local rates.

Although pronounced by John Bright " the worst act passed by any Liberal government since 1832," the legislation of 1870 opened a new era in the history of English education; the making of school attendance compulsory in 1880, and of elementary education free in 1891, logically followed. As time passed the voluntary schools, however, found themselves seriously cramped for funds and at increasing disadvantage in competition with the rate-supported board schools. Private benefactions were, at best, irregular and uncertain, and under a system of " payment by results " introduced in 1861 the church schools received, toward the close of the century, a steadily diminishing share of the national educational subsidy. Relief was sought from Parliament, and in 1897 larger grants were assured. But the situation was not greatly improved, and agitation was kept up until, in 1902, a great Education Act was passed with a view to equalizing the financial resources of the two classes of schools.

The measure drew its impetus mainly from the Established Church and was placed on the statute book, under the leadership of the Unionist government of Mr. Balfour, by the "khaki" parliament elected in 1900.

The act of 1902 was not wholly controversial; the clause which abolished the school boards and vested the management of the publicly supported schools in the county, borough, and district councils was not strongly opposed. But the main part of the act, *i.e.*, the clauses admitting the voluntary schools to a share in the local rates, stirred party feeling as no piece of legislation in a decade. The act provided, in brief, that the councils, as the local rate-levying and expending bodies, should support the former board schools and the voluntary schools alike, so far as might be necessary, out of the rates; and that, whereas the management of the secular schools should lie with the school committees of the councils, the denominational schools should be controlled by local committees of six members, two representing the council and the other four the denomination. No religious instruction distinctive of any denomination might be given in any "provided," or former board, school; and, in order to receive aid from the rates, the denominational schools must give religious instruction only under conditions readily permitting pupils to absent themselves from it.[1]

Backed by the bulk of the Liberal party, the Nonconformists vigorously opposed the measure. Many of them had viewed with ill-concealed satisfaction the financial difficulties of the Anglican schools and had hoped that these establishments would either be compelled to abandon their denominational connections or be squeezed entirely out of the educational system. To such persons it was galling to see these schools given not only a new lease on life but a more advantageous and settled position in the educational system than they had enjoyed in fifty years. The fact was duly exploited that while the act had transferred to public taxation almost the entire cost of maintenance of the voluntary schools, the actual management of these schools, including (with few restrictions) the appointment of teachers, remained in denominational hands. The act was denounced as a device intended to augment the power of the Established Church; and it was argued that a parliament elected almost exclusively upon questions relating to the war in South Africa had no moral right

[1] For a convenient reprint of the important parts of the Education Act see J. C. Greenough, *Evolution of Elementary Schools of Great Britain* (New York, 1903), 192–237.

to enact so revolutionary a measure upon so remote a subject. For a time, indeed, the enforcement of the law was seriously obstructed. Thousands of Nonconformists refused to pay the rates from which the denominational schools were to be supported, only to have their property sold by the public authorities to satisfy the obligation. More than seventy thousand were summoned to court, and many were imprisoned. In time, the furor died down. But the question kept an uppermost place in politics, from which it was hardly ousted even by Mr. Chamberlain's tariff proposals; and the feeling aroused on it became one of the principal causes of the overwhelming defeat of the Unionist party at the parliamentary elections of 1906.

The Liberals came into power thoroughly committed to the Nonconformist cause, and one of the first great pieces of legislation which they sought to carry through Parliament was a measure calculated to undenominationalize, although not altogether to secularize, popular elementary education. The bill, introduced April 9, 1906, by Mr. Augustine Birrell, president of the Board of Education, stipulated, in the main (1) that after January 1, 1908, only such schools as were established, supported, and controlled by the local authorities should be recognized as public schools with a claim upon public funds, national or local; (2) that after the date mentioned no religious tests should be required of teachers in any public school; and (3) that while denominational religious instruction for those who should desire it might be given two mornings a week in the denominational schools taken over by the local authorities, such instruction should be given by persons other than the regular teachers, and not at public expense. The objects of the bill were, obviously, to place under public management all elementary schools aided from public funds, to provide an undenominational school within the reach of every child, to free teachers from religious tests, and yet at the same time, as a matter of compromise, to permit some denominational religious teaching in schools in which it hitherto had existed.

Despite the opposition of the Anglicans, who said that the measure proposed a virtual confiscation of the denominational schools, the bill passed the House of Commons by a large majority, in June, 1906. In the House of Lords the opposition was in full command; and although the measure was passed by a substantial majority, it was fundamentally changed — for example, so as to compel instruction in religion, presumably in the tenets of the Established Church. The lower house re-

jected the Lords' amendments by a heavy majority, and the Government, declaring compromise impossible, withdrew the bill. At least three other measures on the subject, sponsored by the Board of Education, appeared later; but no one of them ever got beyond the committee stage, and the act of 1902 continued in operation without important change until the Great War. After 1909 the issue fell somewhat into the background, while others — the reform of taxation, Home Rule, woman suffrage, the disestablishment of the Church in Wales, and the regulation of the liquor trade — were pushed to the fore. The problem, however, had not been solved; the factors in it remained practically unchanged; and when the situation again became favorable, sharp controversy upon it was likely to be resumed. The war led to anxious inquiry into the workings and the results of the educational machinery, and in 1918 an extremely important Education Act was passed with a view to toning up the entire system. Some changes were made in the duties of the local education authorities and in the distribution of government grants. The fundamental issue between state-controlled and denomination-controlled education was not, however, removed, and the question still invites to party controversy.[1]

[1] The educational system and the principal questions concerning it are clearly described in Lowell, *Government of England*, II, Chaps. xlvii–l. Historical treatises include G. Balfour, *Educational Systems in Great Britain and Ireland* (Oxford, 1898); H. Holman, *English National Education* (London, 1898); and J. E. G. Montmorency, *The Progress of Education in England* (London, 1904). The religious controversy is reviewed in May and Holland, *Constitutional History*, III, Chap. iv. Wartime legislation is described in A. A. Thomas, *The Education Act of 1918* (London, 1919), and there is a synopsis in *U. S. Monthly Labor Rev.*, Dec., 1918.

CHAPTER XVIII

PARTY POLITICS SINCE 1914

Parties and the Great War. — War can usually be counted on to produce important changes in political parties and party alignments. New or dormant issues are brought to the fore; men are forced into unaccustomed relations, which alter their ways of thinking and their habits of action; and even if, as is sometimes true, public sentiment is roused, in the face of a sudden external danger, to demand a complete cessation of party contests — that is to say, a party truce — in the end there is apt to be an intensification, rather than otherwise, of party spirit and party activity. The experience of Great Britain since 1914 has run in these general lines; and it is the purpose of the present chapter to point out the salient features of this experience and to describe briefly the *post bellum* state of parties, as far as it could be determined some eighteen months after the armistice.

The party situation at the outbreak of the war has been described elsewhere,[1] and the major facts can be restated in a few words. The Liberals were in power, and Mr. Asquith was prime minister, although the party's adherents scarcely outnumbered the Unionists in the House of Commons, and the premier and his colleagues clung to office only with the aid of the Irish Nationalists and the Laborites. Acting under the provisions of the Parliament Act, the Liberals were about to place on the statute book a number of highly contentious measures to which they had long been devoted, notably Home Rule for Ireland, disestablishment of the Church in Wales, and the abolition of plural voting. The Liberal policy inclined strongly, furthermore, to ameliorative social legislation; the Government had in hand, at the moment when the war broke out, a minimum wage bill for agricultural laborers. A general election was not more than fifteen months distant, and the results of by-elections, confirmed by other evidences, indicated that the Unionists had so far regained the confidence of the country that they would be in a position to go into the contest with a fair chance of winning. Ireland was on the

[1] See pp. 257–259.

brink of civil war over the terms of the Home Rule Bill; the militant woman suffragists were again openly defying the authorities; organized labor was uncommonly restless, and even public employees were striking — in short, politics was at the boiling point and the entire aspect of public affairs was almost unprecedentedly troubled. Small wonder that the German war lords, intently calculating the possibilities of an international conflagration on the continent, came to the comfortable conclusion that Britain's internal condition would not permit her, even if she were so minded, to become a participant in the contest.

The ease and speed with which the United Kingdom pulled itself together, dropped its domestic quarrels, and turned its full strength to the business of war surprised not only the Germans but the world generally. Such action could be made possible, of course, only by a cessation of party strife; and the capital fact of the war period proper, so far as political history goes, is the suspension of party activity, just as the prime political interest of the years following the armistice became the revival of party life and the struggle of old and new party forces for dominance. On July 30, 1914 — five days before Britain entered the war — the premier, having conferred with the leader of the Opposition, and with other men outside his own party, voiced in a solemn speech in the House of Commons the feeling of all groups that it was of vital importance that the country should be able to speak and act in the crisis "with the authority of an undivided nation"; and when the die was definitely cast for war, a formal truce was entered into by the party leaders, to be binding as long as the contest should last. Contentious domestic questions were to be shelved; adherents of all parties were to work together in Parliament for the country's well-being in the emergency, without consideration for or prejudice to their party standing; no party was to try, at a by-election, to wrest a seat from the party to which it "belonged."

The Government's decision for war was supported by all parties except the Independent Laborites;[1] and all — even the group mentioned — eventually subscribed to the truce. Rupture was threatened when, at the middle of September, the premier announced that the Home Rule Bill and the Welsh Disestablishment Bill would be put on the statute book forthwith, accom-

[1] Certain individual leaders demurred. Thus, Lord Morley and John Burns resigned from the cabinet, and Ramsay Macdonald surrendered the chairmanship of the parliamentary Labor party, rather than countenance the Government's decision.

panied by measures suspending them for twelve months or until the termination of the war. In the course of a particularly stormy session the Unionist members of the House of Commons, indeed, withdrew from the chamber in a body as a protest against the Government's "indecent violation of its pledge."[1] This recrudescence of domestic strife, however, roused keen public resentment, and, the Irish and Welsh questions having been disposed of as the Government desired, all elements turned again to the tasks imposed by the war.

It was illogical — at all events under the English system — that a government composed of members of a single party should require and receive the support of the adherents of rival parties through a long and indefinite period. Only war could have made the arrangement possible for even a short time; yet the very fact of war demanded a broader basis for the exercise of public authority. The adoption of the coalition principle, in May, 1915, was therefore inevitable. The Liberal premier remained at the helm, but the positions of chief responsibility in the ministry were apportioned not very unequally between Liberals and Unionists, with also some representation of Labor. The new cabinet consisted of twelve Liberals, eight Unionists, and one Labor member, besides Lord Kitchener, who was not a party man. Liberals, Unionists, and Laborites together formed eighty-eight per cent of the membership of the House of Commons; so that, for all practical purposes, Government and Opposition were merged in one homogeneous body. Party activity was reduced to a minimum, both in Parliament and outside.

The history and character of the coalition under Mr. Asquith, and of the coalition and war cabinet under Mr. Lloyd George, have been dealt with elsewhere.[2] It must suffice to note here merely that dissolution of the alliance was many times threatened and barely prevented; that there were numerous resignations of individual ministers; that after the reorganization of the ministry by Lloyd George in December, 1916, the most important posts — aside from the premiership — passed into the hands of Unionists; that Unionism steadily strengthened its hold upon, not only the government, but the country at large; that in 1917–18 a formal Opposition once more appeared in the House of Commons, led by ex-Premier Asquith; that from the summer of 1918 Labor also went its own way; and that by the date of the armistice the country was again the scene of party strife almost as

[1] *London Times* (Weekly ed.), Sept. 18, 1914, p. 741.
[2] See pp. 106–111.

vigorous as before the war, although the lines were differently drawn and the issues were somewhat less clear-cut.

The party situation as it stood when Britain emerged from the war is best shown by the circumstances and results of the parliamentary election of December, 1918; and an account of that notable contest, with a summary of party developments following it, will be undertaken below. One major factor in the situation must, however, be singled out for emphasis before going farther, namely, the revival, in a new form, of the problem of Ireland.

The Irish Question: Sinn Fein. — The history and merits of the Irish question have been considered elsewhere, and the critical stage at which the issue had arrived when the World War came on in 1914 has been duly described.[1] There will be no attempt here to do more than point out the main phases of the controversy during the war period, and to show the character of the new Home Rule Bill which the Coalition Government hoped in 1919 to make the basis of a lasting settlement. As has been pointed out, the party truce was accompanied by an agreement to the effect that the Home Rule Bill of 1912, which, having been passed three times by the House of Commons, lacked only the royal assent to make it law, should be put on the statute book, but should be suspended for the duration of the war; and the Liberal Government was committed to some form of amendment of the measure in the interest of Ulster before it should take effect. This arrangement seemed to have disposed of the question as long as the war should last. The Irish Nationalist leaders, notably John Redmond, supported the Government wholeheartedly in its efforts to bring victory to the Allies; volunteering was understood to be going on satisfactorily in both the north and south of Ireland; it was supposed that the heart of the Irish people was with Britain and her co-belligerents; and for upwards of a year the outward serenity of the situation was not disturbed.

We now know that, even in the early months of the war, the Irish people were restless and discontented, and that by the close of 1915 troubles were brewing which the authorities were unable to forestall. An immediate grant of Home Rule was widely demanded; volunteering, actively obstructed by the radical elements, yielded steadily diminishing numbers of recruits; official vigilance did not prevent the Germans from obtaining supplies on the west Irish coast; and presently it was disclosed

[1] See pp. 281–395.

that clever propagandists were fast converting the bulk of Irishmen from Home Rulers to advocates of radical republicanism and of complete national independence. The principal agent of this propaganda was a society known as Sinn Fein. The term means "ourselves alone," and the organization drew its inspiration from a series of efforts about the opening of the present century to revive and perpetuate Gaelic culture, especially on linguistic and literary lines. The movement had much in common with nationalistic tendencies in the same period in other parts of Europe, and in Asia and Africa as well. As a distinct society, Sinn Fein dates from 1905, and, under the leadership of Arthur Griffith, a vigorous Dublin agitator and editor, it took on from the first an essentially political character. Its adherents deprecated the Nationalists' caution and willingness to compromise. They believed that by natural right their country was a sovereign state, and they denied the validity of all agreements and arrangements which subordinated it to the British Empire. They wanted to sever all political ties with Britain, to purge the land of every form of British influence, and to set up an independent commonwealth.

For several years the Sinn Fein movement made little headway; the Nationalists held the field, and the bulk of the people were bent on concessions under British rule rather than on independence. As late as 1912, when the third Home Rule Bill was introduced, the Sinn Feiners were regarded as only a noisy and irresponsible faction. The events, however, of the two succeeding years, the Ulster protest, the Unionist support of the Ulsterites' position, the preparations for armed conflict, and the forced decision of the Liberal Government to concede Ulster some form of special treatment — put into the hands of the radical leaders a lever with which to move the people almost *en masse ;* and by 1914 Sinn Fein was in a position to challenge the moderate Nationalist policy at every turn. Then came the war, and with it the truce, in which even Sinn Fein outwardly shared. It is apparent enough now that the Sinn Fein propaganda was never more than momentarily interrupted, that active dealings with the Germans went on steadily, that it was confidently believed that Germany would give whatever aid was needed for the final expulsion of British power, and that the idea took hold early that now was the time to strike for independence. The upshot was an armed insurrection in Dublin on the Monday after Easter, 1916. The rebellion was promptly put down, but not until the Sinn Feiners had challenged the world's attention

by proclaiming the Irish Republic a sovereign and independent state, and by electing a visionary schoolmaster to be its president.

The Easter uprising brought the Irish situation to a new crisis, and from this point is to be dated a state of quasi-warfare between the British government and the Irish Catholic populations which has hardly been ameliorated since. On the one hand, the British authorities felt it necessary to put the country under martial law, to mete out summary punishment to the insurrectionists, and to limit the freedom of the people in a wide variety of ways. On the other hand, the government's measures invested the rebellion's leaders with a halo of martyrdom and made the name Sinn Fein one to conjure with from Donegal to Cork. In 1917 the Sinn Fein organization and program were overhauled, and a young teacher of American birth, Eamonn De Valera, assumed active leadership. By 1918 Nationalists were suffering defeat in practically every by-election in which Sinn Fein candidates were opposed to them, and it was manifest that the center of gravity of the entire Irish question had shifted from the issue of Home Rule to the issue of independence.[1]

Futile Attempts at Settlement. — Meanwhile the British government, harassed by the burdens of the war in Europe and by numerous tasks incident thereto, made intermittent efforts to bring about a reconciliation, if not a lasting settlement. First, in the summer of 1916, Mr. Lloyd George, who was deputed to negotiate with the Irish leaders and to arrange a compromise, reported a plan under which Home Rule was to be immediately brought into operation, with the exclusion of the Protestant portions of Ulster, and upon the understanding that the entire arrangement would be subject to revision after the war. But the Sinn Feiners and part of the Unionists objected, and the scheme was not carried out. Next, in March, 1917, the Nationalists formally demanded that the Home Rule Act, as it stood on the

[1] A brief impartial account of the growth of Sinn Fein, and of the Easter uprising, is Turner, *Ireland and England*, 315-395. Partisan histories of Sinn Fein include F. P. Jones, *History of the Sinn Fein Movement and the Irish Rebellion of 1916* (New York, 1917), and P. S. O'Hegarty, *Sinn Fein: an Illumination* (Dublin, 1918). The uprising of 1916 is described from the Sinn Fein point of view in M. Skinnider, *Doing My Bit for Ireland* (New York, 1917), and from the Nationalist point of view in L. G. Redmond-Howard, *Six Days of the Irish Republic* (Boston, 1916); and more impartial accounts are W. B. Wells and N. Marlowe, *History of the Irish Rebellion of 1916* (New York, 1917), and J. F. Boyle, *The Irish Rebellion of 1916* (London, 1916). Nos. 102-103 of the *London Times Illustrated History and Encyclopedia of the War* are devoted to the subject, and there is an official account in *Report of the Royal Commission on the Rebellion in Ireland*, 1916, Cd. 8279.

statute book, should be put into effect, as "proof of Britain's sincerity in championship of small nations and democracy." But Unionist-Ulsterite opposition was sufficient to prevent this from being done. Various other proposals having failed, an Irish convention was assembled at Dublin, July 25, 1917, on suggestion of the Government, to work out a plan. The intention was that the gathering should be representative of all parties; but the Sinn Feiners refused to participate, preferring to hold a convention of their own at which they adopted a resolution asserting that "any and every means" should be employed to expel the British from Ireland and drew up a constitution for an independent Irish republic. The report of the loyalist convention given out on April 12, 1918, tried to reconcile conflicting interests by a scheme for immediate Home Rule with special privileges of representation for Ulster. But both the extreme Unionists and the extreme Nationalists presented minority reports which showed that no real settlement had been reached.[1] At this juncture the controversy was raised to a new pitch by the premier's proposal to introduce Home Rule and conscription simultaneously. A conscription bill was passed by the House of Commons; but the opposition, not only of Irishmen of all groups, but of large numbers of Englishmen, was so bitter that, great as was the need of increased man-power on the western front, the plan had to be given up.[2]

Throughout the remainder of 1918 the tension continued unrelieved, and the closing months of the year brought fresh opportunity for demonstration of Sinn Fein strength and purpose. The first opportunity of the kind came with the parliamentary election of December. In this contest the Irish question loomed large. In their election manifesto the leaders of the Coalition Government, Lloyd George and Law, urged that there could

[1] The reports showed that the members of the convention fell into three main groups: (1) a moderate, central group, which advocated a solution on federal lines, Ireland becoming substantially a state in a United Kingdom federation; (2) an Ulster group, which urged the maintenance of the existing union, or, if that was impossible, the exclusion of six counties of Ulster from any Home Rule act; and (3) an extreme Nationalist group, which demanded that Ireland should be given the status of a self-governing dominion, as Canada. Sinn Fein sentiment was, of course, not represented. On the convention see, in addition to contemporary periodical literature, J. Quinn and G. W. Russell, *The Irish Home Rule Convention* (New York, 1918), and W. B. Wells and N. Marlowe, *The Irish Convention and Sinn Fein* (New York, 1919). The official report of the convention is to be found in a Blue-book (Cd. 9019), and there is an authoritative popular account in *London Times* (Weekly ed.), Oct. 31, 1919, and succeeding issues. The interval between the Easter rebellion and the convention is reviewed in *Round Table*, Dec., 1916, and Mar., 1917.

[2] Turner, *Ireland and England*, 418–437.

be no political peace for the realm until the Irish question was settled, and that it should be settled on the basis of self government, but added that there must be no separation from Great Britain and that Ulster must not be placed under forcible subjection. Ex Premier Asquith, speaking for the non-coalition Liberals, demanded that Irish self government be forthwith put into operation on the basis of the act of 1914, and the Labor party laid stress on Ireland's right to "freedom." In the island itself, the contest lay mainly between the Nationalists and Sinn Fein. The new party put up candidates for all but five of the 105 seats to which the country was entitled, and the contest developed such bitterness as not even Ireland had known. People who knew the situation expected substantial Sinn Fein successes. But not even the Sinn Fein leaders themselves looked for the landslide that resulted. The Unionists secured a total of 25 seats, thus practically holding their own. The Nationalists obtained 7, as compared with 84 in 1910; Sinn Fein captured the remaining 73. The Nationalist party — the party of Butt and Parnell, of Redmond and Dillon — was not only defeated and repudiated; it was practically annihilated. Among the Sinn Fein victors was the cultured Countess de Markievicz, English by birth and Polish by marriage, whose Dublin home had long been a center of Sinn Fein influence, and who thus became the first woman to be elected to Parliament.[1]

The Sein Fein candidates announced during the campaign that, if elected, they would keep up protest against the British connection by refusing to take their seats; and this pledge was scrupulously observed. In point of fact, thirty seven of the successful ones were at the time in jail, and four were under indictment in the United States. In January, 1919, such of the newly elected members as were free to do so assembled in the Mansion House at Dublin and organized themselves into a constituent assembly with a view to giving Ireland an independent republican government. There was to be a parliament (*Dail Eirann*), consisting of deputies chosen in the existing constituencies, and executive authority was to be lodged in a president and a group of ministers. The principle of self determination was declared no less applicable to Ireland than to Poland or Czechoslovakia, and fervid, although futile, appeals were repeatedly addressed to President Wilson, to French and Italian statesmen, and finally to the Peace Conference itself, asking that Ireland should be

[1] P. Colum, "The Sinn Fein Victory in the Irish Elections," in *N. Y. Nation*, Jan. 11, 1919.

admitted to representation in the Conference on the same basis as Great Britain, or at all events that the country's independence should be promptly and unconditionally recognized. In February, 1919, De Valera, who had defeated the Nationalist leader, Dillon, in a former Nationalist stronghold, and who had been elected president of the Irish republic while he was confined in an English prison, escaped from confinement; and shortly afterwards, having appeared among his followers and encouraged them to keep up the fight, he made his way to the United States, where he obtained some assistance for his cause, both financial and moral.[1]

Home Rule Bill of 1919. — Meanwhile, the Lloyd George Government turned attention afresh to a settlement of the problem. Four fifths of Ireland was in covert rebellion; an insurrectionary government steadily defied the British authorities, even though it was itself unable to function; a semblance of order was maintained only by armed repression; one unfortunate event after another showed how bitter was the Irish feeling and how difficult it would be to find a basis of agreement. Official conferences and informal discussions went on intermittently for months, and only at the close of 1919 was the Government ready to lay its proposals before Parliament. On December 22 — three days after an unsuccessful attempt in Dublin to assassinate General French, the Lord Lieutenant — Lloyd George outlined the forthcoming bill in a masterful speech.[2] The measure, officially known as the Government of Ireland Bill, passed its first reading on February 27, 1920, and its full contents were then for the first time made public.

The plan embodied in the bill — the fourth historic measure of the kind — was prepared by a cabinet committee whose chairman was Walter Long, First Lord of the Admiralty. As explained by the premier, it rested on three basic considerations: first, that three fourths of the Irish people, being rebels at heart, would be bitterly hostile to any scheme that the Government might propose; second, that Ulster must not be subjected to the rule of a Catholic majority; and third, that the severance of Ireland from the United Kingdom would be fatal to the interests of the United Kingdom and Ireland alike, and that any attempt at secession must be resisted by force. The measure was drawn

[1] De Valera, "Ireland's Right to Independence," in *N. Y. Nation*, June 7, 1919. A useful résumé of the Home Rule question during the war is Turner, *Ireland and England*, 396–417.

[2] Reprinted in *N. Y. Times Curr. Hist.*, Feb., 1920, pp. 205–214.

on lines wholly different from its predecessors. Its salient features were: (1) two unicameral Irish parliaments, one at Belfast representing the six counties of Antrim, Down, Armagh, Londonderry, Fermanagh, and Tyrone, and the boroughs of Belfast and Londonderry, and the other at Dublin, representing the remainder of the country; (2) the members of the House of Commons of Northern Ireland (52 in number) and of the House of Commons of Southern Ireland (128 in number) were to be chosen by the same electorate that returns members to the Imperial Parliament, on the principle of proportional representation; (3) a Federal Council of forty members (twenty elected by each legislature), with a president appointed by the crown; (4) in addition to full powers of private bill legislation and regulation of railways, this Federal Council might consider any matters touching the welfare of either part of the country and make recommendations concerning them, and it should have such additional powers within the range of the authority of the new parliaments as they should bestow on it; (5) the two parliaments were to have full legislative powers over all subjects not expressly reserved to the Imperial (or, as the premier significantly called it, the Federal) Parliament at Westminster, such reserved subjects being, chiefly, war and peace, the army and navy, treason, aliens and naturalization, foreign trade, coinage, customs and excises, and excess profits and income taxes; (6) there should be no attempt by the government of the United Kingdom to bring about a union of the two legislatures, but these bodies were themselves empowered to establish such a union, and the hope, as well as belief, was expressed that this would soon come to pass; (7) executive power should remain in the king and should be exercised through a Lord Lieutenant, appointed for six years, and through two sets of ministers, one in the north and the other in the south; (8) there should be a separate judiciary for each of the two areas, with a High Court of Appeal for the entire country; (9) as provided by the Home Rule Bill of 1912, Ireland should retain forty-two representatives in the House of Commons at Westminster; (10) the supreme authority of the Imperial Parliament should remain unimpaired over all "persons, matters, and things" in Ireland. The closing clause of the measure repealed the Home Rule Act passed in 1914.[1]

As was expected, the bill was coldly received in Ireland; Sinn Fein demanded complete independence, the Ulster Unionists urged the maintenance of the *status quo*, and there was no one to

[1] For a fuller summary see *N. Y. Times Curr. Hist.*, May, 1920, pp. 201-203.

defend the federal plan. The island became more and more turbulent, and military rule was tightened, until the country became practically an armed camp. Sinn Fein won fresh triumphs in the municipal elections of January 15, and became more than ever dominant and defiant.[1] In England the bill was strongly opposed by the Labor party and by the Independent, or non-coalition, Liberals. The former demanded that the principle of self-determination be applied to Ireland, although a commission sent to study the subject on the spot said in its report that the lesser island must be kept under the control of the Imperial Parliament in all that pertained to foreign relations and defense.[2] The Independent Liberals held to the principles of the act of 1914, arguing that the new scheme neither met the demands nor had the approval of any element in the island, that (contrary to the professed belief of the Government) the division of the country for which it provided would tend to become permanent, and that no geographical lines could be drawn which would satisfy all elements. On the other hand, the adherents of the Coalition Government, whether of Unionist or Liberal proclivities, supported the bill with such enthusiasm as they could command, arguing chiefly that it could be passed safely in justice to the remainder of the United Kingdom, that it conferred on Ireland as much self-government as the security of all interests would permit, that it gave the Irish people a chance to settle their own quarrels, and that the scheme was so constructed that it could easily be made to fit into a general federal system such as, according to certain Government leaders, would eventually have to be adopted.[3]

On March 29 the bill passed its second reading by a majority of 254 votes, which was unexpectedly large; and at the date of writing (June, 1920) the measure was reasonably certain to become law, although numerous amendments were pending — including one supported by the Independent Liberals and by Labor providing that there should be but a single parliament, and another backed by the Independent Liberals proposing county option for Ulster. It was by no means certain that some changes, although hardly any so far-reaching as those named, would be made. Ulster was, on the whole, prepared to accept

[1] Approximately eighty-five per cent of the Sinn Fein candidates were successful. Even in Londonderry the Unionists were defeated, and in the province of Ulster as a whole the Sinn Fein vote was 238,374, as compared with a Unionist vote of 238,318.

[2] The report of this commission is reprinted in *N. Y. Nation*, Apr. 10, 1920.

[3] It will be recalled that a Speaker's Conference on Devolution was now studying this problem. See p. 204.

the new arrangements. But the Nationalists were warmly opposed to them; Sinn Fein gave no evidence of a change of heart; and it was widely predicted that the scheme would immediately break down through the refusal of Catholic Ireland to take the steps necessary to organize under it. Meanwhile the need of a settlement was becoming daily more urgent, not only in view of the chaotic conditions in the island, but because, under the terms of the Home Rule Act of 1914, the completion of the peace negotiations with the belligerent states would automatically bring that measure — which now found little support outside of Independent Liberalism and Labor — into effect.

The Election of 1918: the Coalition Campaign.[1] — Wartime conditions joined with a new electoral law to give the British parliamentary elections of December, 1918, many novel features. The national electorate, including six million women, was twice as large as ever before; balloting, except by soldiers and other absentees, was confined to a single day; votes were allowed to be sent in by post, and even to be cast by proxy; the usual party contest was replaced by a trial of strength between a coalition government, which found support among practically all political elements, and a number of groups whose physiognomy would hardly have been recognized by an *ante bellum* observer.

The first important question was whether there should be an election at all; that is, whether before the peace treaty was signed. The adoption of the Representation of the People Act in the preceding February set up a presumption that Parliament would be dissolved reasonably soon. Military reverses in ensuing months discouraged all plans in that direction. But by midsummer the situation on the various fronts was again well in hand, and thenceforward there were increasing signs that the Coalition Government meant to make an early appeal to the electorate for a fresh lease of power; and its purpose in the matter was definitely announced in the early autumn. The old-line Liberals, led by ex-Premier Asquith, strongly opposed the plan. They said that, notwithstanding the arrangements contemplated in the new electoral law, a large proportion of the three million British and Irish soldiers on foreign soil would be unable to vote. They urged, too, that no election was needed to enable the Coalition Government to go to the peace conference with the mandate of a united people; that Government had won the war, and no one disputed its right to make the peace. The Labor party

[1] The following three sections are adapted from an article published by the author in the *Amer. Polit. Sci. Rev.*, Feb., 1919.

also objected, ostensibly because of apprehension about the soldier vote, although in fact mainly because the machinery which the party had been building up in the constituencies since its reorganization earlier in the year was as yet incomplete.

The Coalition leaders, however, declared an early election a plain necessity. The existing parliament dated from December, 1910, and hence had overrun the legal maximum by three years; five times since 1915 it had by resolution extended its own life. It is true that almost one half of the members of the House of Commons had been returned at by-elections since the general elections of 1910. But every one conceded that the chamber had grown weary, spiritless, feeble, and unrepresentative. It was moribund, declared the premier, and lacking in authority from the broadened and altered electorate to deal with the great problems confronting the country. Britain's spokesmen at the peace conference must know that they had behind them a House of Commons fully and freshly representative of the nation, and one which could be trusted to take up with unspent vigor the tasks of economic and social reconstruction. Non-coalition Liberals charged that the premier was looking beyond the peace, and that what he really had in mind was a prolonged lease of power, to be obtained while the nation was disinclined to a political overturn, and to be employed in carrying out a program fashioned in collaboration with his Unionist supporters.

Parliament was prorogued on November 21, and the dissolution followed in four days.[1] Already, on November 16, the premier and Mr. Law (the chief Unionist member of the war cabinet) had opened the Coalition campaign at a meeting in Central Hall, Westminster; and soon thereafter they put their case before the voters in a joint manifesto. Notwithstanding their emphasis upon the imminence of the peace conference as a reason for holding an election, the Government leaders were curiously silent upon international matters until the campaign was far advanced. The premier made long speeches in which the subject was not touched; the manifesto briefly proclaimed the Government's intention, if kept in power, to procure a "just and lasting peace" and to promote the formation of a league of free nations, but devoted itself mainly to topics of a domestic, or at least a purely British, character. Of such topics, seven were given principal emphasis: (1) land reform, with a view to the general extension

[1] The party complexion of the House of Commons at the dissolution was: Unionists, 282; Liberals, 260; Laborites, 38; Irish Nationalists, 78; Sinn Feiners, 6; miscellaneous, 6 — total 670.

of allotments and small holdings, the increase of agricultural wages, the expansion of agricultural production, and especially the settlement of returned soldiers and sailors on the land; (2) housing reform, and the improvement of village life on "large and comprehensive lines"; (3) fiscal legislation so shaped as to reduce the war debt with a minimum of injury to industry and credit, to avoid fresh taxes on food and raw materials, and to set up a preference in favor of the colonies upon existing or future duties; (4) liberation of industry as speedily as possible from government control; (5) reform of the House of Lords, so as to create a second chamber "which will be based upon direct contact with the people, and will, therefore, be representative enough adequately to perform its functions"; (6) execution of the pledge already given to "develop responsible government in India by gradual stages"; and (7) solution of the Irish problem on the basis of self-government, but without either the severance of the island from the British Empire or the forced submission of Ulster to a Home Rule parliament.

One can understand why the Coalition campaigners should have preferred to say little about international affairs. Such discussion would inevitably lead into the minutiæ of complicated questions upon which it was difficult or futile at this stage to take a stand. The voters, however, soon wearied of the pabulum handed out to them. Ordinarily the Irish question, land reform, and imperial preference could have been depended upon to furnish fuel for a sufficiently exciting contest. But what the men and women who attended political meetings now wanted to know was, What was to be done with the Kaiser? Was Germany to be made to pay the costs of the war? And what was to be the Government's policy regarding enemy aliens? Upon these and other related matters the premier and his colleagues were finally obliged to speak. At Newcastle, on November 29, Lloyd George declared for a "relentlessly just" peace, the expulsion of enemy aliens, payment by Germany of the costs of the war up to the limits of her capacity, and the punishment of individuals (including the Kaiser) responsible for the war and for infractions of international law. There were plenty of evidences that the country was in a mood for far-reaching social and political reform; but the popular attitude was rather that of assuming that such reform must and would come. The only questions on which the electorate allowed itself to be wrought up were those relating to the terms with Germany.

The Election of 1918: Other Groups. — It early became ap-

parent that, outside of Ireland, the voters had three groups among which to choose: the Coalition, the Independent Liberals, and the Laborites. Pronouncing the election "a blunder and a calamity," the Independent Liberals, led by Mr. Asquith, frankly avowed their purpose to maintain their distinct party character. A declaration adopted by the National Liberal Federation at its Manchester meeting in October, and ratified by the Scottish Liberals' meeting at Glasgow, served as a platform. After taking advanced ground on industry, agriculture, capital and labor, housing, taxation, public health, and other social topics, this instrument reaffirmed the belief that free trade is vitally necessary to the welfare of the nation; and it urged that Irish self-government be at once made "not only what it is, a statutory right, but an accomplished fact." Throughout the campaign the concessions of Lloyd George to his Unionist colleagues and supporters were warmly denounced. Imperial preference once an accomplished fact, it was argued, the hated taxes on food would soon follow; Home Rule was a legal fact and ought not to be cavalierly shelved; and what would a reform of the House of Lords be worth if carried out by a government whose mainstay was the Tory party? On the questions which most interested the voters, *i.e.*, those related to the conditions of peace, Mr. Asquith and his followers could only take a common position with the Government. But, fighting against great odds, they waxed very indignant over their former leader's alleged disregard of the interests of their party, particularly as seen in his approval of the putting up of Coalition candidates against life-long Liberals and in constituencies that had never been anything other than Liberal.

The campaign derived no small share of its interest from the activities of the Labor party; indeed the Labor campaign was more vigorous than that of any other group outside of Ireland. Three hundred and sixty candidates were placed in the field, as compared with a former maximum of 68; and a manifesto, headed "Labor's Call to the People," challenged universal attention. The main points were: "a peace of reconciliation and international coöperation," with an international labor charter as an essential part of the peace treaty; immediate withdrawal of the Allied forces from Russia; self-determination for Ireland, India, and all other parts of the British Empire; the restoration of civil and industrial liberties; the complete abolition of conscription; land nationalization; immediate construction of a million new houses at the state's expense; strict maintenance of

free trade; heavily graduated direct taxation on capital to pay the war debt; immediate nationalization and democratic control of mines, railroads, shipping, armaments, and electric power; abolition of unemployment; a national minimum wage; universal right to work or maintenance; complete adult suffrage; and equal pay for women.[1]

The arguments chiefly employed by the Coalition leaders against the election of a Labor majority were that the party did not represent labor as a whole, but only a section and a minority of it, and that its leadership was of pacifist and bolshevist tendencies. Similarly, their arguments against a Liberal triumph were that the Asquith group, being no more numerous than the Liberals supporting the Coalition, had no right to pose as the Liberal party of former days, and that it was too barren of leadership and capacity to be intrusted with the nation's affairs.

In the Catholic portions of Ireland the issue was sharply drawn between the Nationalists and the Sinn Feiners. The former wanted home rule made effective; the latter would be satisfied with nothing less than independence. The campaign was exciting, and was attended with much disorder. The Sinn Feiners, whose rising strength had been evidenced in recent months by almost unbroken success in by-elections, decided to contest all of Ireland's 105 seats except five, and from the outset the tide obviously flowed in their favor. As has been stated, their candidates made known their purpose, in the event of election, to abstain from attendance at Westminster; although some people felt that if Labor won a great victory it might make overtures which would lead the Sinn Feiners to take their seats with a view to coöperative action.

Results of the Election. — The campaign came to a close December 13 with a round of meetings almost up to pre-war standards, and on the following day the poll was taken for a total of 584 seats. One hundred and seven candidates had been returned unopposed; polling for the fifteen university seats began December 20; and in one constituency the poll had to be postponed on account of the death of a candidate. Already some four million voting papers, with a supply of envelopes and ballot boxes, had been distributed among the soldiers in the home camps and on the western front. At the close of the polling in the constituencies, December 14, the ballot boxes were sealed and deposited by the returning officers in places of security, usually the

[1] The party's formal platform is printed in P. U. Kellogg and A. Gleason, *British Labour and the War* (New York, 1919), 413–417.

district police station. For two weeks these officers continued to receive the ballots — duly signed and witnessed — sent in by post, and also the votes cast by proxy. The count took place on December 28. No separate record was kept of the votes cast by absentees, or by any other special group of electors. But three or four facts seem fully substantiated; first, that not over fifty per cent of the registered electors actually voted; second, that, as the Liberal and Labor leaders predicted, large numbers of the soldiers overseas could not — at all events they did not — vote; third, that, perhaps mainly owing to the shortness of time, the proxy system was used sparingly; and fourth, that, contrary to the expectation of most preëlection observers, the women cast a heavy vote.

The circumstances were so unusual that comparisons with other elections are worth little. The outstanding feature of the results was the complete triumph of the Coalition. There was hardly room for doubt before the poll that the Coalition would win. But no one expected its margin of success to be so wide. Polling about five ninths of the popular vote,[1] it obtained 472 seats out of the new total of 707. The Asquith Liberals fared badly. The ex-premier was himself defeated in the constituency of East Fife which had returned him at every election since 1886,[2] and the party captured only 26 seats. Several ex-ministers suffered the humiliation of forfeiting their electoral deposits because of failing to poll as many as one eighth of the votes in their constituencies. Labor increased its representation, winning 59 seats. Yet this was by no means the showing that had been confidently predicted; and the three ablest leaders, Ramsay MacDonald, Philip Snowden, and Arthur Henderson, were defeated. Forty-six non-coalition Unionists were elected, and two or three minor groups won scattering victories. Ireland, as has been pointed out, was swept by the Sinn Feiners, who won 73 seats, while the Nationalists retained but seven. Before the election the Nationalists had 78 seats and the Sinn Feiners six. The new parliament contained an unusual proportion of fresh blood. Upwards of half of the members — 338, to be exact — had not belonged to the preceding parliament. Two hundred and fifty, or more than one third, had seen service in the war.

[1] The popular vote was as follows: England and Wales, 8,403,656; Scotland, 1,139,322; Ireland, 1,046,042 — total, 10,679,020. Coalition candidates obtained approximately 5,790,000 votes and their opponents approximately 4,840,000. The total electorate in the 107 constituencies in which members were returned unopposed numbered 3,081,266.

[2] W. Notestein, "The Career of Mr. Asquith," in *Pol. Sci. Quar.*, Sept., 1916.

Scrutiny of the results led to certain important conclusions. The first was that the nation indorsed the Coalition Government which had brought it successfully through the war, approved the Coalition's peace terms as far as they had been announced, and wanted peace negotiated by the men at present in office. A second was that the people as a whole had no sympathy with pacivism or bolshevism; a score of Labor and Liberal candidates whose names had become associated with the idea of a "negotiated" peace went down to ignominious defeat. A third conclusion was that the era of Liberal rule begun in 1905 was at an end — that the nation, in other words, had "gone Unionist"; not only was the Coalition quota in the new parliament predominantly Unionist (335 Unionists, 127 Liberals, and 10 Laborites), but the House of Commons as a whole, even counting the non-participating Sinn Feiners, was Unionist by a margin of 53 seats. Finally, the results in Ireland showed that the situation in that country was the most critical that an English government had faced in a hundred years.[1]

Party Developments after the Election of 1918. — Supported by his new and impressive mandate, the premier forthwith reconstructed the Coalition ministry with a view to the tasks ahead; seventy-seven appointments were announced,[2] although the number of newcomers (ten) was considerably smaller than the country expected. Aside from the premiership, most of the important posts were assigned to Unionists; and the war cabinet, which was indefinitely continued, remained a predominantly Unionist group. Coalition supporters commonly assumed an air of confidence toward the future. But outside critics and observers were agreed in predicting that the new Government would have a hard road to travel; and events proved the forecast well founded. In the first place, the ministry had to take up an appalling number of intricate national problems precipitated by the war and by the imminent return of peace, not to mention the difficult questions, notably Ireland, which it inherited from its predecessors. In the second place, the necessity of devoting the

[1] Political developments in the period of the election can be followed conveniently in the weekly edition of the *London Times*. The following articles, selected from an extensive periodical literature, are of interest: S. Webb, "The Coming British Elections," in *New Repub.*, Aug. 3, 1918; Anon., "The General Election in England, *ibid.*, Dec. 21, 1918; J. B. Firth, "Victors and Vanquished at Westminster," in *Fort. Rev.*, Feb., 1919; C. Masterman et al., "The General Election and After," in *Contemp. Rev.*, Feb., 1919; S. Webb, "The New British Parliament," in *New Repub.*, Jan. 25, 1919; Anon., "Mr. Asquith's Defeat," in *N. Y. Nation*, Mar. 1, 1919.

[2] *London Times* (Weekly ed.), Jan. 17, 1919, p. 59.

main attention for many months to the peace negotiations at Paris meant a prolonged delay in domestic legislation, at a time when grave industrial and social troubles demanded earnest and concentrated thought. Furthermore, the known divergences of opinion within the ministry, and even within the cabinet, entailed hesitation and delay; while the very magnitude of the Government majority in the House of Commons, like the huge majority after the election of 1906, proved a source of embarrassment. Even sooner than had been generally predicted, there were signs of the Government's waning popularity; and presently a remarkable series of by-elections began to emphasize with staccato effect the drift toward the elements of opposition.

The nature and identity of the Opposition (in the technical meaning of the term) was, indeed, a matter of much curiosity when the new parliament assembled. Next to the Government, Labor had the largest number of seats, and in strict adherence to custom, this would have meant the right to occupy the Front Opposition Bench. The Independent Liberals, however, could not reconcile themselves to such an arrangement, and the outcome was a compromise whereby the official leaders of both parties, with certain of their respective colleagues, regularly occupied that strategic position. The two groups were not formally allied. But circumstances made virtual allies of them; and, although weak numerically, they kept up a flow of criticism which the Government could never entirely ignore.

So far as alignments within Parliament go, this situation obtains at the date when these pages are written. How long it will last, and what will supersede it, are, however, questions of deep and nation-wide interest; and certain efforts and tendencies may be cited as indicating lines upon which the party system may again be stabilized. The first of these is the attempt to hold Liberalism together and restore the party to its former place as a distinct force in politics. At the first meeting of the executive committee of the National Liberal Federation following the election of 1918 ex-Premier Asquith declared it of the highest national importance that the Liberal party should preserve its identity and its independent activity, and urged that the Liberal organizations throughout the country be kept alive.[1] In line with this admonition the non-coalition Liberal group in Parliament chose a leader in the person of Sir Donald McLean and entered jointly with Labor, as has been stated, upon the rôle of the Opposition; while successive conferences and dinners, calling forth pro-

[1] *London Times* (Weekly ed.), Jan. 24, 1918, p. 90.

nouncements upon policy both from Mr. Asquith (who remained the real leader) and from other authoritative spokesmen served to keep up party *morale* throughout the country. In February, 1920, Mr. Asquith himself reappeared in the House of Commons, sitting now for Paisley instead of his old constituency of East Fife. This event, together with notable gains of the Independent Liberals in various other by-elections, led to a wide demand as the summer of 1920 dawned for a full restoration of party unity — in short, for the secession of all Liberals from the Coalition, and therefore for the termination of the Coalition itself. It was argued that the Coalition was a combination of distinct and opposing parties, formed under the exceptional circumstances of war and continued in 1918 for a particular purpose, *i.e.*, the making of the peace; that the combination was, by its very nature, temporary and provisional; that its objects had now been attained; that it must forthwith be broken up unless it were to be permitted to shrink up into a mere cabal serving narrow and personal interests; that, in any case, to convert it into a permanent instrument of government would mean completely to subvert its original and only proper purpose. It was urged, too, that the existing situation tended to develop a real antagonism between Coalition Liberals and Independent Liberals. The two elements were regularly putting up candidates one against the other in the constituencies; and — since the party machinery in the majority of constituencies was in the hands of the Independents — the Coalition elements were being tempted to create party machinery of their own, although the effect would certainly be to stir up fresh animosities and to add perceptibly to the difficulties of reunion.

A second important development of the period was the reorganization of the Labor party, carried out with a view to giving the party a broader constituency and securing for it greater weight in the political life of the reconstruction era, and based on a new constitution adopted at a party conference at London in February, 1918. Hitherto the party was a pure federation of trade unions, local labor parties, and socialist and coöperative societies; men became members of it solely by virtue of belonging to one or another of these local organizations. But henceforth, in addition to these groups, there were to be local branches of the party, formed and kept up in the constituencies in the manner of local branches of other parties, and offering an opportunity for persons who did not belong, and perhaps did not care to belong, to trade unions or socialist societies to acquire and hold Labor party

membership. Another innovation was the formal recognition of "all producers by hand or by brain," without distinction of class or occupation, as desirable adherents of the party and as having claims upon the party's protection. Finally, some changes were made in the party machinery, and it was specially enjoined that before every general election the party program should be voted by the party conference and that every candidate bearing the party's name should unequivocally declare his full allegiance to the principles and policies enunciated.

Labor won fewer seats at the general election of 1918 than its adherents hoped for; but during the ensuing year and a half the party increased its hold throughout the country to such a degree that shrewd political observers began to talk about the possibility of a Labor government. In the twelve by-elections of 1919 in which Labor candidates appeared, 113,783 Labor votes were polled, against 104,485 polled by candidates supporting the Coalition, and three new seats were won. Furthermore, analysis of the votes showed that the party was gaining ground, not only in industrial districts, but in middle-class constituencies, and that it bade fair to profit more largely by the extension of the suffrage in 1918 than any other party. The party was weak in parliamentary leadership; its organization was still somewhat chaotic; and it contained both reactionary and progressive elements. But its program was at most points more definite than that of any of its competitors; its tremendous propaganda in the interest of the nationalization of the means of production and distribution made a peculiar appeal under the unsettled conditions prevailing after the war; and there was a distinct possibility that its impressive leftward movement might at any time sweep along with it sufficient numbers of people to bring it into a controlling position.[1]

[1] The best account of the English labor movement during the war, with numerous important documents, is P. U. Kellogg and A. Gleason, *British Labour and the War* (New York, 1918). A briefer but useful survey is E. M. Friedman, *Labor and Reconstruction in Europe* (New York, 1919). Among source materials the most valuable is the *Labour Year Book*, of which there were issues for 1916 and 1919. Two important articles are A. W. Humphrey, "The British Labor Movement and the War," in *Polit. Sci. Quar.*, Mar., 1917, and C. H. Northcott, "The Organization of Labor in War Time in Great Britain," *ibid.*, June, 1917. Systematic discussion of the political ideas, aims, and methods of organized labor in the new era following the war include A. Henderson, *The Aims of Labour* (London, 1918); G. D. H. Cole, *Labour in the Commonwealth* (New York, 1919); R. Lane [Norman Angell], *The British Revolution and the American Democracy* (New York, 1919); S. G. Hobson, *National Guilds and the State* (London, 1920). Among magazine articles may be mentioned A. Henderson, "The Outlook for Labour," in *Contemp. Rev.*, Feb., 1918; A. G. Gardiner, "Mr. Henderson and the Labor Movement," in *Atlant. Month.*,

The third development that can be mentioned is the movement to convert the Coalition into a permanent party. It is impossible to determine when and by whom this proposal was first made; there is no reason to think that it was in the mind of any one when the combination was originally formed, and nothing was said about it publicly until after the armistice. But in May, 1919, an informal committee of new Coalition members in the House of Commons assumed the task of preparing a plan for a permanent Center party, to be composed of moderate yet progressive men — Coalition Liberals and liberal-minded Unionists — with a view specially to opposing the growing political power of Labor.[1] During the summer several leading ministers declared for the plan, and by the end of the year both the premier and the nominal Unionist leader, Mr. Law, were known to favor it. Early in 1920 an announcement of the consummation of the scheme was for a time almost daily expected. For one reason or another, however — perhaps because the Coalition heads preferred to await a more favorable opportunity (*e.g.*, a national election), perhaps because their minds were not fully made up on the subject — no overt step has been taken to the date of writing.

Naturally, the proposal aroused keen interest among all political elements, for its realization might not only bring the party alignments of former years to a definite end but recast the entire party system on a new and lasting basis. The Independent Liberals argued that the time was ripe for a return to the party separateness of pre-war days. They pointed to the diminished popularity of the Coalition as shown by the Independent Liberal and Labor victories in the by-elections, and contended that Liberal support was fast falling away, that so far as the country at large was concerned the Coalition would soon be nothing more than the Unionist party, and that only a formal dissolution of the ministerial combination was necessary to revive the party system as it was before the war. The Coalition leaders, on the other hand, urged that the Coalition itself ought to be maintained for yet a good while; that the old party system was obso-

Aug., 1918; G. D. H. Cole, "Recent Developments in the British Labour Movement," in *Amer. Econ. Rev.*, Sept., 1918; S. Brooks, "The British Labour Outlook," in *N. Amer. Rev.*, Feb., 1919; F. J. C. Hearnshaw, "The Labour Party at the Crossings," in *Fort. Rev.*, Mar., 1919; R. Roberts, "England in Revolution," in *N. Y. Nation*, May 17, 1919; J. R. MacDonald, "The Independent Labour Party," *ibid.*, June 14, 1919; and G. D. H. Cole, "British Labour Strategy," *ibid.*, Oct. 18, 1919. Mention may be made also of M. Phillips et al., *Women and the Labour Party* (New York, 1919).

[1] Other names eventually suggested for the new party were National Reform, National Democrat, and Progressive.

lete; that the future cleavage would be primarily between moderates of both of the older major parties on the one hand and the radical forces of labor and socialism on the other; and they strongly intimated the naturalness, and indeed the necessity, of a permanent fusion of the moderate Unionist and Liberal elements.

The Coalition Government, backed by a huge majority of at least nominal supporters, was in a position to go on indefinitely; and this it showed a disposition to do, notwithstanding a defeat in the House of Commons late in 1919 which in ordinary times would have led to the retirement of the ministry, and notwithstanding keen and growing criticism based on charges of dilatoriness, lack of policy, extravagance, evasion of constitutional rules, and tendencies to autocracy. So unstable was the situation, however, that a national election might be precipitated almost over night; and no man living could foretell the course that, in such an event, party organization and activity would take.[1]

[1] The drift of English party politics after the election of 1918 can be followed conveniently in the weekly editions of the *London Times* and the *Manchester Guardian*, although allowance must be made for the critical attitude of both publications toward the Coalition Government. See also Anon., "The Leadership of the English Liberals," in *New Repub.*, Feb. 15, 1919; J. R. MacDonald, "Great Britain's Political Chaos," in *N. Y. Nation*, Nov. 8, 1919; W. P. Crozier, "Political Portents in England," in *New Repub.*, May 31, 1919; Anon., "The Political Outlook in England," *ibid.*, Jan. 14, 1920; S. Webb, "The Portent of Spen Valley," *ibid.*, Feb. 4, 1920; and J. R. MacDonald, "Drifting toward a Labor Government," in *N. Y. Nation*, Feb. 28, 1920.

CHAPTER XIX

GREATER BRITAIN: THE SELF-GOVERNING COLONIES

The Tradition of Political Freedom. — Our description of the British political system cannot justly be brought to a close without a word of comment on the governmental institutions and problems of the British Empire. After all, the United Kingdom, while in most respects separate and self-contained, is only part of a political dominion that extends over almost one fourth of the earth's habitable surface, and that controls the destinies of more than one fourth of the world's population. Relatively, the Roman Empire was a more colossal power, for in the days of its splendor it embraced practically the entire civilized world. Measured absolutely, however, the British Empire transcends all political creations of both past and present times.

Speaking broadly, the peoples living under the British flag to-day are as prosperous, as contented, as free, and as jealous of their rights as any other great group of peoples in the world. They dwell in every clime; they belong to almost every race; they represent every conceivable stage of culture; they have every possible economic interest; the proportion of people of European stock is hardly greater than it was a century and a half ago. Yet the ties that hold the Empire together have been proved stronger than even the optimists, in pre-war days, supposed them to be. The reasons why they are so cannot be considered here. They run the gamut of blood relationship, cultural connections, trade and business advantages, desire for protection, and what not. But at bottom is the cardinal fact that, on the whole, the British Empire has been, in the past hundred years, wisely, and even beneficently, governed. Great outlying dependencies have been transformed into what are to all intents and purposes free states; peoples upon whom it has not been deemed safe or wise to confer full rights of self-government have been given partial rights; peoples in a still more backward condition have been governed firmly but honestly, and usually to their own great advantage, by English administrators.

From the beginning England, in contrast with other expanding nations, permitted her colonists to have a voice in their own government; and yet it was only by bitter experience that even she was made to see that colonial autonomy, far from being inconsistent with true imperial power, may be made its surest basis. It is interesting to note what a modern scholar, who writes from the English standpoint, has to say upon this subject. "When the outpouring of Europe into the rest of the world began, the British peoples alone had the habit and instinct of self-government in their very blood and bones. And the result was that wherever they went, they carried self-government with them. . . . In the eighteenth century, and even in the middle of the nineteenth century, Britain herself and the young nations that had sprung from her loins were almost the only free states existing in the world. It was because they were free that they throve so greatly. They expanded on their own account, they threw out fresh settlements into the empty lands wherein they were planted, often against the wish of the mother country. And this spontaneous growth of vigorous free communities has been one of the principal causes of the immense extension of the British Empire. Now one of the results of the universal existence of self-governing rights in the British colonies was that the colonists were far more prompt to resent and resist any improper exercise of authority by the mother country than were the settlers in the colonies of other countries, which had no self-governing rights at all. It was this independent spirit, nurtured by self-government, which led to the revolt of the American colonies in 1775, and to the foundation of the United States as an independent nation. In that great controversy an immensely important question was raised, which was new to human history. It was the question whether unity could be combined with the highest degree of freedom; whether it was possible to create a sort of fellowship or brotherhood of free communities, in which each should be master of its own destinies, and yet all combine for common interests. But the question (being so new) was not understood on either side of the Atlantic. Naturally, Britain thought most of the need of maintaining unity; she thought it unfair that the whole burden of the common defense should fall upon her, and she committed many foolish blunders in trying to enforce her view. Equally naturally, the colonists thought primarily of their own self-governing rights, which they very justly demanded should be increased rather than restricted. The result was the unhappy war, which broke up the only family of free nations that had

yet existed in the world, and caused a most unfortunate alienation between them, whereby the cause of liberty in the world was greatly weakened. Britain learned many valuable lessons from the American Revolution. In the new Empire which she began to build up as soon as the old one was lost, it might have been expected that she would have fought shy of those principles of self-government which no other state had ever tried to apply in its oversea dominions, and which seemed to have led (from the imperialistic point of view) to such disastrous results in America. But she did not do so; the habits of self-government were too deeply rooted in her sons to make it possible for her to deny them self-governing rights in their new homes. On the contrary, she learnt, during the nineteenth century, to welcome and facilitate every expansion of their freedom, and she gradually felt her way towards a means of realizing a partnership of free peoples whereby freedom should be combined with unity. Its success (although it must still undergo much development) has been strikingly shown in the Great War."[1]

The Self-Governing Dominions: General Features. — From the point of view of their political status, the far-flung lands composing the British Empire to-day — aside from the United Kingdom itself — fall into four main groups: (1) the self-governing dominions, (2) the crown colonies, (3) the protectorates, and (4) India, which, while partaking of the characteristics of a crown colony and of a protectorate, is neither, but is rather a "dependent empire," with internal organization and external relationships peculiar to itself. The self-governing dominions are five in number: the Dominion of Canada, the Commonwealth of Australia, the Union of South Africa, the Dominion of New Zealand, and the Colony of Newfoundland. Their aggregate area in 1914 was 7,500,000 square miles, or a little more than one half of the entire Empire, including India — more than three fourths, if India be left out of the reckoning. Their total white population was about 15,000,000, as compared with 46,000,000 in the United Kingdom.

The student of government discerns at a glance two striking facts about these five great regions. The first is that, although they are parts of what custom compels us erroneously to call an empire, they are, for most purposes, independent nations. The second is that all are, in everything but name, republics, — with parliaments elected on democratic suffrages and with responsible executives similar to the working executive in the

[1] R. Muir, *Character of the British Empire* (London, 1917), 9–12.

mother country. They have their own flags, their own armies, their own navies; they amend their own constitutions and make their own laws, with a minimum of interference from London; they appoint their own officers (except the governors-general, whose functions are almost as purely formal as those of the English king); they levy their own taxes; they freely impose protective duties on imports from the mother country and from other parts of the Empire; they make no compulsory financial contributions to the mother country, not even to help pay the interest on indebtedness incurred generations ago in protecting these very colonial possessions; they are not required to contribute to the upkeep of the navy, which is still the great defender of them all; although technically "at war" whenever the United Kingdom is in that state, they are not obliged to send a man or a ship or a shilling. In short, their purely political connection with the mother country is extremely slight. Almost the only tangible evidence of it is their inability to send ministers and consuls of their own to foreign countries and to pursue an independent foreign policy. The right of the crown to disallow their legislative acts,[1] the right of Parliament to legislate for them,[2] and even the right of the Judicial Committee of the Privy Council to hear appeals from their courts,[3] are less frequently exercised as time goes on. Indeed, of late the dominions have been allowed to negotiate separate commercial treaties and other international agreements; for example, the Canadian-French commercial treaty of 1907 was negotiated by plenipotentiaries named by the Dominion government, although furnished with credentials from the king-in-council. In view of this increased control over foreign affairs, Canada, in 1909, established a new "ministry of external relations."[4]

The Dominion of Canada. — Having observed these facts about the self-governing dominions in general, we may look a little more closely into the form and character of government in

[1] Legally, the crown, acting on the advice of the ministers and through the agency of the governor-general, can disallow any colonial legislation. The power is so seldom exercised that the colonial parliaments rarely have any practical regard for it in the enactment of laws. Since 1867, for example, only six or eight Canadian acts have been disallowed.

[2] Since 1778 the recognized principle has been that Parliament has a right to enact measures of any sort relating to the colonies except bills imposing taxes for the purpose of revenue. No parliamentary act applies to the colonies unless it is so specified in the measure; and very few acts do so apply.

[3] See p. 218.

[4] A good brief account of the political development of the self-governing colonies is Lowell, *Government of England*, II, Chap. lv. See also A. J. Herbertson and O. J. Howard, *The Oxford Survey of the British Empire* (Oxford, 1914).

three of the principal countries, Canada, Australia, and South Africa. Canada is of special interest, not only because in both area and population it is the greatest of the dominions, but also because of its nearness to, and its close relations with, the United States. As might be expected, its governmental system affords many points of comparison and contrast with our own. The very first fact to be noted, indeed, is that, like the United States, but unlike England, Canada is organized on a federal plan; that is, the powers and functions of government are divided by a written constitution between a central or national government on the one hand and a number of regional or provincial governments on the other. In its present form the Canadian confederation dates from 1867, when, at the request of the colonists themselves, the parliament at London passed the British North America Act bringing together four formerly separate colonies — Quebec, Ontario, New Brunswick, and Nova Scotia — in the new "Dominion of Canada." As population spread westward in later decades other provinces were created by the Canadian parliament, very much as our own western states were admitted to the Union by Congress; so that since 1905 the Dominion has consisted of nine provinces, besides the Yukon and Northwest territories.

Long before the act of union the original states obtained representative government; and after 1840 the most advanced ones also got responsible government, *i.e.*, a system under which the ministries became responsible, as the ministry is in England, to the elected legislature. There was, therefore, no question when the plans for the new federation were drawn up as to the general form which the government should take. The English system served as the model; the American was drawn upon at certain points to round out the scheme, and especially to harmonize it with the federal principle. The essential features of the Dominion government can be presented briefly. The formal executive head is the governor-general, who is appointed in London, nominally by the king, but actually by the cabinet, and usually for five years. To him it falls to play substantially the rôle played in the mother country by the sovereign, with the difference that certain powers, *e.g.*, the veto, which have become obsolete in the royal hands are sometimes, although seldom, exercised by the colonial dignitary. The working executive is the group of men — 23 in number, in 1917 — comprising technically the privy council, but actually the cabinet, whose members get their places in substantially the same way that English cabinet

officers get theirs; that is, the governor-general designates as premier the recognized leader of the majority party in the popular branch of Parliament, and the premier selects his colleagues and assigns them to their posts. Party solidarity, membership and leadership in Parliament, collective responsibility to the popular branch of Parliament, absence of the titular executive from cabinet meetings, the leadership of the premier, even the purely customary basis on which the cabinet system rests — all are exactly as in England; and there are two great opposing parties, Liberal and Conservative, which facilitate the working of the system, just as in the motherland.

Parliament consists of two houses, a Senate and a House of Commons. The Senate contains 96 members, Quebec and Ontario having 24 each, Nova Scotia and New Brunswick 10 each, and other provinces lesser quotas, to as low as three, in approximate proportion to population. It was suggested when the plan of government was in preparation that the senators should be elected by the people. But, mainly from fear that an elected upper house would encroach on the powers of the lower house, it was decided to give the power to appoint into the hands of the governor-general (in effect, the cabinet). Appointment is for life, although there are several ways, besides death and resignation, by which seats may be voluntarily or involuntarily vacated. Except for the familiar requirement that money bills shall be first considered in the lower chamber, the Senate has identical powers and functions with the House of Commons. Ordinarily, however, the chamber has been content to play the rôle of a reasonably diligent but unambitious revising body.

The House of Commons, like its counterpart in the mother country, consists of representatives chosen by the people in districts, with the difference that in Canada there is, as in the United States, a reapportionment following every decennial census. To prevent the total membership from becoming too large, Quebec's quota (65) is stationary, and the quotas of all other provinces are increased or diminished so as to be in proper proportion to it. The allotment of 1914 gave Ontario 82 seats, Nova Scotia and Saskatchewan 16 each, and other provinces lesser numbers, the total being 234. As in the United States, the suffrage is regulated by the state legislatures, and is, therefore, not uniform. In seven of the nine provinces manhood suffrage prevails; in the other two — Nova Scotia and Quebec — there are small property or income qualifications. The maximum term is, as in England, five years; but dissolutions take place with sufficient frequency

to reduce the average lifetime of a parliament to about four years. The House of Commons is easily the controlling branch of the legislature. All finance bills originate there; most important measures of other kinds are first submitted to it; it is the forum for political controversy, the chamber in which reputations are made and great policies determined. And it must be observed that the powers of the central government are in most directions greater than those of the federal government of the United States. Sixteen clauses of the North America Act define the powers of the provinces; twenty-nine are taken up with a description of those to be exercised by the federal parliament; furthermore, whereas in the United States the powers of the nation are limited and enumerated and those of the states broad and residual, in Canada all powers not exclusively vested in the provinces belong to the government at Ottawa.

Of the governments of the provinces it is impossible to speak, save to say that the nominal executive is a lieutenant-governor appointed by the governor-general (in effect, the Dominion cabinet) for five years; that this official has a cabinet council of four or five members which, under the leadership of a premier, comprises the working, responsible executive; that the legislatures, elected in all cases except two by manhood suffrage, consist also in all cases except two of but one house; that the cabinet system operates substantially as in the national government; and that, in short, the organization of a government at a provincial capital is modeled as closely upon the government at Ottawa as differing conditions permit. Each of the provinces has its own code for the organization and administration of municipal affairs in counties, villages, towns, and cities. The main point of difference from the English local government system is the larger number of officers elected directly by the people.[1]

[1] The best one-volume account of the Canadian government is E. Porritt, *Evolution of the Dominion of Canada* (Yonkers, 1918). An excellent presentation of the subject will be found in A. B. Keith, *Responsible Government in the Dominions*, 3 vols. (Oxford, 1912) *passim*. The important constitutional documents are in H. E. Egerton and W. L. Grant, *Canadian Constitutional Development* (London, 1907). There is an outline in A. P. Poley, *Federal Systems of the United States and the British Empire* (Boston, 1913), Chaps. xv–xxiii; and a moderately successful exposition by a Canadian jurist is W. R. Riddell, *Constitution of Canada in its History and Practical Working* (New Haven, 1917). Other important works are: A. H. F. Lefroy, *Canada's Federal System* (Toronto, 1913); J. E. C. Munro, *The Constitution of Canada* (Cambridge, 1889); and W. H. P. Clement, *Law of the Canadian Constitution* (3d ed., London, 1915). A. Todd, *Parliamentary Government in the British Colonies* (2d ed., London, 1894), although old, can be used to advantage. The history and working of the cabinet system is authoritatively described in A. Shortt, "Relation between the Legislative and Executive Branches of the Canadian

The Commonwealth of Australia. — The history of Australia has been said to be as monotonous as the country's scenery. For students of political science, and of public affairs, however, the building of the great federal government which operates today in the remote island-continent is filled with interest and instructiveness. Nowhere in the world has English political genius had freer scope in the creation of a nation on virgin soil; nowhere in the English-speaking world — not even in the United States — have advanced conceptions of democracy been put so fully into practice amidst a vast population and over a broad expanse of territory. The first civil government was set up in the country, in New South Wales, in 1823; and thereafter written constitutions, representative legislatures, and responsible executives were given the various colonies as rapidly as growth of population permitted. By 1860 there were five self-governing colonies (including the island of Tasmania); and a sixth was organized in 1890. Union under a federal government was suggested as early as the middle of the nineteenth century, but fifty years of discussion and experiment proved necessary before the colonies could come into agreement upon a plan. A scheme was at length made ready, in 1899, for the home government's consideration, and in the great Australia Commonwealth Act of the following year Parliament gave the project its assent. The new arrangement took effect on the opening day of the present century.

The Commonwealth consists of six states, and it also exercises jurisdiction over the Northern Territory (on the mainland) and over British New Guinea. New states may be admitted by the Dominion Parliament on such terms as it desires to impose. New Zealand has had the opportunity to come in; but, being twelve hundred miles distant, and having very satisfactory governmental arrangements, that country has preferred to remain a separate self-governing dominion. Unlike the Canadian constitution (the North America Act), which was put in operation without popular action, the Australian fundamental law (the Commonwealth Act) came direct from the hands of the people; and in contents and arrangement it strongly resembles the constitution of the United States. The Canadian instrument can be amended only by act of the Imperial Parliament, but the Australian can be changed whenever a majority of the people in a

Government," in *Amer. Polit. Sci. Rev.*, May, 1913. Current political events are adequately chronicled in J. C. Hopkins [ed.], *The Canadian Annual Review of Public Affairs* (Toronto, 1901–).

majority of the states so vote, providing the desired amendment has been passed by both houses of the Commonwealth Parliament, or passed twice, at an interval of not less than three months, by one house. The final enactment by the Imperial Parliament is purely formal. Amendment is decidedly easier to bring about than in the United States.

The structure of government is so similar to that in Canada that it need not be dealt with at length. The governor-general, representing the British crown, is the nominal chief executive. The ministers, selected as in Canada, form the actual, working executive. There is no written provision for a cabinet system — no mention, even, of the prime minister. But the system is nowhere more fully operative. Parliament consists of a Senate and a House of Representatives, following the nomenclature of our own Congress. The Senate contains six members from each state, elected directly by the people on a general ticket, and for six years. Representatives are chosen by the people in single-member districts for three years. As in Canada and the United States, a reapportionment follows every decennial census; and undue increase in the size of the house is prevented by the requirement that the lower chamber shall be maintained at practically double the membership of the upper one. As in Canada, the suffrage is controlled by the individual states in so far as the federal government does not impose regulations. Under state law, manhood suffrage prevails everywhere, and most of the states have also bestowed the franchise on women. Following the American plan, and in contrast with the Canadian, the federal government is given only limited powers; residual powers are assigned to the states. The powers definitely conferred upon the federal government are more extensive than in the United States, for the Australians were able to learn from the experience of this country what powers are needed by such a government. But there is far less centralization than in Canada. The history of the Commonwealth in the past fifteen years has been notable for a great succession of measures designed to establish complete political and social democracy. So powerful, indeed, has the working class become that in 1910 the country found itself with a Labor ministry, supported by a Labor majority in the House of Commons, and with a former Scottish coal miner as premier.[1]

[1] The political history of Australia to 1911 is accurately sketched in E. Jenks, *History of the Australasian Colonies* (new ed., Cambridge, 1912). The subject is dealt with at greater length in G. W. Rusden, *History of Australia*, 3 vols. (Melbourne, 1897), and in H. Parkes, *Fifty Years in the Making of Australian History* (London, 1892). The best account of the system of government is Keith, *Respon-*

The Union of South Africa. — The latest, and in many respects the most remarkable, triumph of the British policy of colonial unification is the Union of South Africa. At the close of the Boer war, in 1902, Great Britain had, in the late theater of conflict, two self-governing colonies, Cape Colony and Natal, and two conquered territories, the former Boer republics, Orange Free State and the Transvaal, upon which she had promised to confer responsible government of the familiar English type. The pledge to the Transvaal was redeemed in 1906, and that to the Orange Free State (the present Orange River Colony) in the following year. Problems now arose relating to finance, tariff policy, railroad control, and dealings with the natives, which made close coöperation of the colonies imperative. A movement for union under a common government was accordingly set on foot. Boer and English elements alike supported it, and in 1908 a federal constitution was drawn up by a convention of representatives appointed by the several colonial legislatures. Only one colony (Natal) cared to take advantage of the opportunity given for submitting the instrument to a popular vote. Ratified there, the constitution was sent to the home country, where, in the autumn of 1909, Parliament gave it final approval. The new system took effect May 31, 1910.

The main question before the constitution's framers was whether to create a comparatively decentralized union like Australia or a highly centralized one on the plan of Canada. The considerations that made a union necessary at all seemed to require a union of very substantial strength. Hence the decision was for a unitary, rather than a federal, system. The four component provinces became mere local government areas, with separate legislative and administrative machinery, but with powers reduced far below the level of those of even the Canadian provinces. On the other hand, the Union government was endowed with comprehensive powers, both enumerated and residual. This decision did not in any way interfere with the complete installation of the parliamentary system; indeed, as the experience of Australia shows, pure federalism, at all events if it involves two popularly elected houses of parliament, is likely to raise the troublesome question of cabinet responsibility divided

sible Government in the Dominions, passim. Poley, *Federal Systems of the United States and the British Empire*, Chaps. xxiv–xxxii, is moderately satisfactory. Three important works are: B. R. Wise, *The Making of the Australian Commonwealth, 1889–1900* (London, 1913); W. H. Moore, *The Constitution of the Commonwealth of Australia* (London, 1902); and H G. Turner, *The First Decade of the Australian Commonwealth* (London, 1911).

between two legislative bodies. The governor-general represents the crown, the ministers (limited to ten) bear responsibility for all executive acts, and every other essential of parliamentary government appears in its due form. The Senate, preserving a touch of federalism, consists of eight members elected by each provincial council, together with eight appointed by the governor-general, for terms of ten years. The House of Assembly consists of 121 members chosen for five years under suffrage laws that admit practically all male Boer and English residents but exclude native Africans. On account of its numerical preponderance, the "South African," or Boer, party has steadily controlled the government, the first prime minister being General Botha, who less than a decade earlier had ably led the Boer army against the forces of Lord Roberts and Lord Kitchener. However, the larger interests of the Empire suffered nothing thereby. An uprising of discontented Dutch elements in the early months of the Great War caused much apprehension; but it was suppressed by a Union government that was itself Boer, and thereafter South Africa bore a full share in the conflict with the Teutonic powers.[1]

Crown Colonies and Protectorates: Egypt. — The self-governing dominions are inhabited chiefly by people who have the deeply implanted instinct of the Anglo-Saxon for self-government, and who are endowed with his rich traditions of political organization, method, and purpose. In many of the oversea possessions, however, men of European stocks are heavily outnumbered by more or less backward natives; and here it is inevitable that a different plan of government should be employed. The majority of these possessions come under the general designation of "crown colonies," *i.e.*, colonies which are kept under substantial control of the British government at London. Like Bermuda and the Bahamas, they may have an elected lower house and an appointed upper house, or council; like Jamaica and Malta, they may have a partially elected and partially appointed legislative council; like Ceylon and the Straits Settlements, they may

[1] The growth of British power in South Africa is well outlined in N. D. Harris, *Intervention and Colonization in Africa* (Boston, 1914), Chap. viii, and in E. Sanderson, *Great Britain in Modern Africa* (London, 1907), Chaps. i, iii. The political history of the period of the Boer war and of reconstruction is set forth in detail in a series of works by W. B. Worsfold, *i.e.*, *South Africa; a Study in Colonial Administration and Development* (2d ed., London, 1897), *Lord Milner's Work in South Africa, 1897-1902* (London, 1906), *Reconstruction of the New Colonies under Lord Milner*, 2 vols. (London, 1913), and *The Union of South Africa* (London, 1913). The governmental system since 1910 is best described in Keith, *Responsible Government in the Dominions, passim.* A briefer account is Poley, *Federal Systems of the United States and the British Empire*, Chaps. xxxiii–xli.

have a legislative council that is wholly appointive; like Basutoland and Gibraltar, they may have no legislative council at all. But all of them have a resident governor or other administrator appointed by the British government, who is a real ruler, charged with carrying out the orders of the Colonial Office at London, and not subject to control from within the colony. In other words, while some have partially developed representative institutions, none have responsible government, in the sense in which we have grown accustomed to use that phrase; the executives cannot be forced out of office by the votes of hostile legislatures. It is always possible for a colony to be raised to a higher grade in the political scale; and there has never been an attempt to make these minor possessions a source of tribute to the governing nation. The British method of administering backward regions is based on two main principles — first, the protection of native rights, and second, equality of opportunity (the "open door") for all trading peoples. British rule in the vast undeveloped parts of Africa, Asia, and Oceanica has not always been free from abuses of power. But there have been no notorious atrocities, and it may be said without exaggeration that to the backward races English authority has meant the cessation of unending slaughter, the disappearance of slavery, the protection of the rights and usages of primitive and simple folk against reckless exploitation, and the chance of gradual improvement and emancipation from barbarism. Everywhere it has meant the reign of law, without which civilization is impossible.[1]

Somewhat different from the crown colonies are the protectorates. In the one, government is largely or wholly in the hands of officials appointed from London, and chiefly Englishmen; in the other, native governments and institutions are kept in operation, but under English supervision. The largest and most important of the protectorates to-day is the ancient land of Egypt, with its dependency, the Anglo-Egyptian Sudan. Technically, Egypt has been a British protectorate only since 1914. Prior to that date, the country indeed occupied a peculiar position. It acknowledged Turkish suzerainty; yet its hereditary prince, the Khedive, was practically immune from Turkish rule; and after 1879 the land was under substantial control, first of Great Britain and France jointly, and later (from 1882) of

[1] On crown colony administration see Lowell, *Government of England*, II, Chap. lvi, and A. Ireland, *Tropical Colonization* (New York, 1899), Chap. ii. An important book is C. Bruce, *The Broad Stone of Empire; Problems of Crown Colony Administration*, 2 vols. (London, 1910).

Great Britain alone, whose Agents and Consuls-General, while nominally acting only as advisers of the Khedive, in point of fact guided the ministers and lawmakers in all that they did. From the last-mentioned date, the country was, therefore, to all intents and purposes, a British protectorate; and the change was one of form rather than of fact when, in December, 1914, the Khedive (who had openly espoused the cause of Turkey in the war) was deposed, Turkish suzerainty was declared at an end, the khedival crown was bestowed on a new native dignitary bearing the title of Sultan, the British Consul-General became a High Commissioner, and the term protectorate was for the first time officially applied to the country.

The preëxisting system, which has been well described as one of government "by inspection and advice," was continued in most of its essentials. The Sultan is continually counseled by the High Commissioner; the ministers are selected as London dictates; they are directed by British financial, judicial, and other special advisers, and the actual work of administration in the departments is carried on by under-secretaries who are Englishmen; the local authorities, from provincial governor to *omdeh*, or village chief, are instructed at every turn by British experts; the native army is drilled and partly officered by British redcoats. Forty years of this sort of control have lifted the country out of a quagmire of political corruption, bankruptcy, ignorance, and misery. The English have been criticized for not advancing the Egyptians more rapidly toward self-government; and a small but noisy "nationalist" party demands the complete and immediate restoration of the country to native control. Much time, however, is required to develop political capacity in a wholly inexperienced and undisciplined people, and the progress that has been made in Egypt is perhaps all that could properly have been expected. The inestimable benefits of law, order, and justice have been secured; a continuous and forceful object-lesson in good administration has been afforded; certain self-governing institutions — chiefly a national assembly, created in 1883 and strengthened in 1913 — have been established; finally, the High Commissioner, Field Marshal Allenby, was able to announce late in 1919 that the British government would soon send to Egypt a deputation which, in consultation with the Sultan and his ministers, would prepare a new and written constitution for the country.[1]

[1] The monumental account of British activities in Egypt is Earl of Cromer, *Modern Egypt*, 2 vols. (New York, 1908). An admirable briefer treatment of the

The Empire of India.[1] — Another ancient land over which British authority has been extended is India — a country which alone contains four fifths of the population of the entire British colonial empire. This remarkably vast and rich dependency was brought gradually under control by a great commercial corporation, the East India Company, chartered by Queen Elizabeth in 1600. Toward the close of the eighteenth century the English government began to assert increasing authority over the company's affairs, and in 1858, following the Sepoy mutiny, all of the corporation's rights and powers were transferred to the crown. The same measure that brought the company's political functions to an end — the Better Government of India Act — vested the management of Indian affairs, subject to the ultimate authority of Parliament, in a new minister, the Secretary of State for India, assisted by a Council of India, consisting of from ten to fourteen salaried members chosen for seven years by the Secretary, and largely from persons of experience in Indian administration. The Secretary and his Council decide important questions of policy; but the actual work of administration must, of course, be left to authorities resident in the dependency.

The chief of these authorities is the viceroy, or governor-general, a dignitary appointed by the crown for five years, and ruling from Delhi, the capital of the ancient empire of the Moguls. His court is the center of British power in the country, civil and military, and is maintained in such splendor as to be in keeping with the traditions to which the natives are attached. Under arrangements existing until 1919, the viceroy was assisted in his numerous duties by two councils: (1) an Executive Council, consisting of five or six high officials appointed by the crown for five years, and serving both individually as heads of departments and collectively as an advisory cabinet, and (2) a Legislative Council, consisting partly of the members of the Executive Council and partly of members named for the purpose by the viceroy. The India Councils Act of 1909 enlarged the Legislative Council, however, to sixty (exclusive of the viceroy and executive councilors), of whom thirty-three were appointed and twenty-seven were elected directly or indirectly by the people;

subject is S. Low, *Egypt in Transition* (London, 1914). Other important works are: Lord Milner, *England in Egypt* (London, 1890); W. B. Worsfold, *The Redemption of Egypt* (London, 1899); A. Colvin, *Making of Modern Egypt* (London, 1906); and A. S. White, *Expansion of Egypt under Anglo-Egyptian Condominium* (London, 1899).

[1] This has been the official designation of the country since, in 1877, Queen Victoria was proclaimed "Empress of India."

and the body thus became considerably more representative, although its powers were as yet limited to proposing measures and discussing them in a preliminary way. Subordinate to the central government were fifteen provincial governments. At the head of each was a governor, or a lieutenant-governor, or a chief commissioner, appointed by the crown; and each included a council with advisory powers. From 1861 provision was made for representation of the natives in these provincial councils, and changes in 1892 and 1909 gave the non-official elements a majority in them, although, like the all-Indian Legislative Council, they had only very limited powers. Within the provinces the main burden of administration fell — and still falls — upon the permanent civil service, a body of officers recruited by severe competitive examination from the most highly educated young men of the United Kingdom and of India itself. These men commonly devote their lives to the service, and they may rise to the responsible positions of provincial governors, or even heads of departments at Delhi. Finally, there were upwards of seven hundred " feudatory " states, containing two fifths of the area and two ninths of the population of the country. Under treaties individually entered into with the British government, these states are still ruled by their native Hindu or Moslem princes, subject only to British supervision and protection. At important native courts British interests are looked after by a crown official known as a " resident."

During the past quarter century there has been much fault-finding by both Hindu and Moslem elements of the population, and the Councils Act of 1909 was passed mainly with a view to allaying discontent by giving the government a more popular character. Even the most ardent " nationalist," however, is obliged to admit that all classes of the people have profited by British rule. Until British power was established the country suffered continually from disunion, war, and absolutism. The British have brought the vast benefits of substantial political unity, impartial administration of a just and equal system of law, and practically unbroken domestic peace, not to speak of such specific reforms as the construction of railroads and highways, the improvement of sanitation, the irrigation of desert lands, the relief of famines, the abolition of widow-suicide and of infanticide, and the introduction of western learning. The Indian peoples pay not a penny of tribute. They contribute nothing to the upkeep of the British navy. They bear the expense of their own army, but not when the troops are borrowed

for service in other parts of the world. British traders enjoy no special privileges in their ports. Protective tariffs may be, and have been, laid with the purpose of restricting imports from the United Kingdom. The whole body of British civil officials in the country does not exceed three thousand, and trained natives are rapidly working their way upwards in the service. In a land where political unity has never existed, where racial and religious cleavages cut to the very bottom of society, where thirty-eight distinct languages are spoken, and where there are no traditions of government save those of absolutism, the establishment of real self-government is a task not of years but of generations, perhaps of centuries. It is not clear that England could thus far have moved more rapidly in India with safety to the fundamental interests involved.

None the less, it is generally conceded that the time has come for important readjustments. India loyally supported the Allied cause during the Great War, but her people were not averse to taking advantage of the new situation created by the conflict to demand larger political rights. The Hindu National Congress appointed a committee in 1915 to draw up a plan for Indian self-government within the Empire; and at simultaneous conventions held at Lucknow in the following year the Congress and the Moslem League, hitherto bitter enemies, came into full agreement upon a demand for their country's admission to the inner councils of the Empire on a footing with the autonomous dominions. In August, 1917, the British government announced, through the new Secretary of State for India, Mr. Montagu, that henceforth Britain's policy would be " the increasing association of Indians in every branch of the administration, and the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in India as an integral part of the British Empire."

This announcement was significant as being the first official avowal of purpose on the part of the British government to make the political education of the Indian peoples a fixed feature of its policy, and their political autonomy a conscious goal. In pursuance of it, an exhaustive study of the problem was made in India in the winter of 1917–18 by the Secretary for India, in collaboration with the viceroy, Lord Chelmsford. The masterly report submitted to the cabinet by these officials early in 1918 rejected the ultimate demands of the " home rule " parties, but recommended very large concessions;[1] and after two expert

[1] *Report on Indian Constitutional Reforms.* Cd. 9109, 1918.

committees, composed almost equally of Englishmen and natives, had made special studies of the suffrage and of other practical questions, a Government of India Bill was introduced in the House of Commons embodying the essentials of the several reports. Debate was prolonged and difference of opinion sharp. But the measure became law in December, 1919.

Under the terms of this act India now has a bicameral representative body which is worthy of being called a parliament. The upper chamber represents an expansion of the Executive Council, renamed the Council of State, into a body of not more than sixty members, of whom not more than twenty may be heads of departments or others serving *ex-officio*. The lower chamber, known as the Assembly, is the former Legislative Council, increased to one hundred and twenty members. Members of the Council of State are named for five years, and members of the Assembly are elected for three years; but either house may be dissolved at any time by the viceroy. Substantial legislative and fiscal powers are conferred, although the Assembly is not allowed to vote on, or even to discuss, certain specified topics of a financial character. Differences between the two houses are resolved at joint sittings. Provincial government, as reorganized, consists of (1) the governor and an executive council of four members (of whom one must be an Indian), with charge of "reserved" subjects; (2) the governor and a group of ministers appointed by him from the legislature, with control of "transferred" subjects; and (3) a legislature composed of the members of the executive council and members elected, under provisions of the act, by an electorate numbering somewhat under two and one half per cent of the population. The popular element in the governmental system has thus been again increased. It is still decidedly smaller than the nationalists demand, and there have been strong expressions of dissatisfaction. But an important step has been taken; and the British government is committed, not only to continued consideration of the subject, but to "the gradual development of self-governing institutions" in the dependency. The act of 1919, indeed, provides for a commission to report, after ten years, "as to whether, and to what extent, it is desirable to establish the principle of responsible government, or to extend, modify, or restrict the degree of responsible government then existing."[1]

[1] An excellent introduction to Indian affairs is T. W. Holderness, *Peoples and Problems of India* (New York, 1913), and the history of English control is satisfactorily presented in A. Lyall, *Rise and Expansion of British Dominion in India*

The Problem of Imperial Reorganization. — Sixty years ago it was widely felt in England that colonies were of doubtful value, and that the English-speaking, self-governing dependencies would eventually claim and obtain full independence. Later came a shift of opinion. Sir John Seeley and other writers roused the nation to a new perception of the glory, power, and importance of the Empire. The unification of Germany and Italy, the rise of Japan, and the growth of the United States brought England, standing alone, into a relatively weaker position than she had been accustomed to occupy. The increase of armaments imposed a burden such as to lead to the suggestion that the colonies, for whose protection in part the new navy was maintained, should bear some share of the cost. The large possibilities of a federal organization of partly autonomous states were revealed by the experience of not only the United States and Germany but, within the Empire, of Canada, and later Australia. The result was that an attitude of indifference gave way to a strong desire to bind the colonies more closely to the mother country, as a means of insuring the Empire's perpetuity, unity, and strength. Ties of sentiment, of common citizenship, and of commercial interest already existed. But no one knew how strong these really were; no one could say what would happen in the event of a serious war in which the mother country should be engaged, but which did not directly touch the colonies' welfare.

The solution seemed to lie in some scheme by which the great

(New York, 1893). The system of government is briefly described in Lowell, *Government of England*, II, 420–429, and Jenks, *Government of the British Empire*, 75–88. The most important documents are brought together in Mukherji, *Indian Constitutional Documents, 1773–1915* (London, 1915), and R. Muir, *Making of British India* (London, 1915). A suggestive study is Bryce, "The Roman Empire and the British Empire in India," in *Studies in History and Jurisprudence*, 1–71. The principal book on the governmental system is C. Ilbert, *Government of India* (3d ed., London, 1915). The development of the civil service is described in A. L. Lowell and H. M. Stephens, *Colonial Civil Service* (New York, 1900). Among numerous books presenting India's case for larger rights of self-government, or otherwise dealing with the political situation, are Aga Khan, *India in Transition, a Study in Political Evolution* (London, 1918); Lajpat Rai, *Young India* (New York, 1917); *ibid., England's Debt to India* (New York, 1917); *ibid., The Political Future of India* (New York, 1919); Archer, *India and the Future* (London, 1917); L. Curtis, *Letters to the People of India on Responsible Government* (London, 1918); K. Rao, *The Future Government of India* (London, 1918); V. A. Smith, *Indian Constitutional Reform Viewed in the Light of History* (Oxford, 1919); F. B. Fisher and G. Williams, *India's Silent Revolution* (New York, 1919); and E. Barker, *The Future Government of India* (London, 1919). Numerous articles in the *Round Table*, especially since 1915, are helpful. The position occupied by the native states is described in W. Lee-Warner, *Native States of India* (London, 1910), and more briefly in *Round Table*, Dec., 1916, pp. 91–113.

self-governing colonies should, without sacrificing their autonomy, and on equal terms one with another, be brought into full copartnership with the mother country; in other words, some plan of "imperial federation." There were several forms which such a federation could take. It might, in the first place, be essentially commercial. That is, the United Kingdom and the self-governing dominions might reciprocally give trade advantages which were denied to the rest of the world. In pursuance of this idea, Canada in 1897 allowed imports from the mother country the advantage of a remission of one eighth of her normal duties, and in three years raised the preference to one third. South Africa, Australia, and New Zealand took similar action. To the present time, however, the arrangement is one-sided; for the Unionist proposal of "tariff reform" in the mother country has been unavailing, and, having no protective duties to lower or remit, the English government cannot meet the colonial governments halfway.

A second possible basis is that of armed defense. It has been pointed out that although the navy is the bulwark of the dominions no less than of the United Kingdom, no one of them, nor yet India, is required to make any contribution to its maintenance. For a decade prior to the outbreak of war in 1914 the English people were staggering under a steadily mounting burden of naval expenditure. The dominions were not unmindful of the situation, and most of them began making small voluntary grants of aid. New Zealand contributed a battle-cruiser; South Africa voted a small annual money payment; Australia started the building of a modest separate fleet unit; Canada discussed the subject but could not settle upon a plan. By voluntary action, furthermore, three of the dominions furnished land forces for use in the Boer war; and all put forth unstinted effort in aid of the motherland and her allies in the Great War of 1914-18. But, after full acknowledgement of this voluntary assistance has been made, the question remains whether it would not be possible, and desirable, to establish a general Imperial scheme of armed defense based on systematic rather than chance coöperation, and organized under unified military control.

Any substantial sort of federation must, however, involve more than trade preference and coöperative defense. There must be a certain amount of common *political* action, and, for this, some political machinery. The dominions have not been slow to let it be known that it does not comport with their power and pride to deal with their "copartner" at London simply

through the Colonial Office, as a crown colony or other inferior dependency is expected to do; and long ago they asked that affairs of a general imperial interest should be discussed, not in the British cabinet alone, but also in a body in which all the great oversea sections of the Empire were represented. Prior to 1914 no positive steps were taken to meet this demand except the organization of the Imperial Conference. The first Conference was held in 1887, on the occasion of the Queen's jubilee. Others were convoked in 1897, 1902, and 1907; and on the last occasion a permanent organization was adopted, with a view to regular meetings every four years. It was noteworthy that the mother country was represented at the sessions, not by the Colonial Secretary, but by the prime minister, an arrangement which tended to put the dominions — who were also represented by their premiers — on a common footing with her. The Conference had no legal status, but as a deliberative and advisory body it rendered valuable service.

It was inevitable that coöperation in the Great War should bring striking changes in the interrelations of the various parts of the Empire. Chief among these was the rise of an Imperial Cabinet. One of the first acts of the War Cabinet organized late in 1916[1] was to convoke a special Imperial Conference in which the self-governing dominions, and also India, were represented. During intervals between the Conference's sessions, in 1917, there were several meetings of a body whose like the nation had never seen before. Into the new and small War Cabinet were brought the premiers and other representatives of the dominions, and also two native spokesmen of India — and not as mere witnesses and informal advisers, but as ministers without portfolio, deliberating and voting under the privy councilor's oath. Furthermore, before the delegates sailed for their homes the British premier, Lloyd George, announced that it was proposed to hold such meetings annually, to be attended by the British premier and such of his colleagues as deal especially with Imperial affairs, by the premiers or other accredited spokesmen of the self-governing dominions, and by a representative of India to be appointed by the Indian government. An Imperial Parliament which should bring together legislative delegates from the whole Empire has frequently been proposed, but as often abandoned as impracticable. Under war-time emergency, however, an Imperial Cabinet became, at least for the time being, a reality. A resolution passed by the Conference of 1917 looked toward a

[1] See p. 106.

general readjustment of the constitutional relations of the British government at a special Conference to be called after the war; and it contained the interesting declaration that "any such readjustment, while thoroughly preserving all existing powers of self-government and complete control of domestic affairs, should be based upon a full recognition of the dominions as autonomous nations of an Imperial Commonwealth, and of India as an important portion of the same, should recognize their right to an adequate voice in foreign policy and in foreign relations, and should provide effective arrangements for continuous consultation in all important matters of common Imperial concern, and for such necessary concerted action founded on consultation as the several governments determine." The experiment of 1917 was repeated in 1918.[1]

[1] For a brief discussion of imperial federation see Lowell, *Government of England*, II, Chap. lviii. One of the earliest extensive discussions is C. Dilke, *Problems of Greater Britain* (London, 1890). More recent books on the subject are R. Jebb, *Studies in Colonial Nationalism* (London, 1905); *ibid.*, *The Imperial Conference*, 2 vols. (London, 1911); *ibid.*, *The Britannic Question; a Survey of Alternatives* (London, 1913); J. G. Findlay, *The Imperial Conference of 1911 from Within* (London, 1912); J. W. Root, *Colonial Tariffs* (London, 1906); C. J. Fuchs, *Trade Policy of Great Britain and her Colonies since 1860*, trans. by C. Archibald (London, 1905); E. J. Payne, *Colonies and Colonial Federation* (London, 1905); Lord Milner, *The Nation and the Empire* (Boston, 1913); L. Curtis, *The Problem of the Commonwealth* (London, 1916); A. P. Newton, *The Empire and the Future* (London, 1916); and W. B. Worsfold, *The Empire on the Anvil* (London, 1916). An interesting expression of opinion by the Earl of Cromer is presented in W. H. Dawson [ed.], *After-War Problems* (New York, 1917), 17–38. On the Imperial Cabinet see J. A. Fairlie, *British War Administration* (New York, 1919), Chap. iii, and G. M. Wrong, "The Imperial War Cabinet," in *Canadian Hist. Rev.*, Mar., 1920. Interesting suggestions are made in A. P. Poley, "The Privy Council and Problems of Closer Union of the Empire," in *Jour. Soc. Comp. Legis.*, Jan., 1917, and A. B. Keith, "The Idea of an Imperial Constitution," in *Canad. Law Times*, Nov., 1916. Useful surveys of the subject are T. H. Boggs, "The British Empire and Closer Union," in *Amer. Polit. Sci. Rev.*, Nov., 1916, and R. L. Schuyler, "Reconstruction of the British Empire," in *Polit. Sci. Quar.*, Sept., 1916.

PART II

GOVERNMENTS AND POLITICS OF CONTINENTAL STATES

1. France

CHAPTER XX

THE RISE OF CONSTITUTIONAL GOVERNMENT

Government under the Old Régime. — Disraeli once whimsically remarked that there are only two events in history — the siege of Troy and the French Revolution. The statement is absurd enough; and yet it contains this undoubted truth, that the political and social transformation of France at the close of the eighteenth century can be kept off no list, regardless of how brief it is, of great historic occurrences. It divided the career of France into two vast, unequal chapters; it released impulses which turned the governments and peoples of all western continental Europe into new paths; despite the apprehensions and admonitions of Burke, it perceptibly affected the political development of England; the waves of its influence have reached the most distant parts of the earth and have not yet spent their strength. Modern government in continental Europe is largely the product, not of the Revolution in any narrow or immediate sense, it is true, yet of the complex of liberalizing forces to which the Revolution first gave full and concrete expression.

In turning to a study of the political systems of the principal continental states it is therefore logical to begin with France; and in undertaking an analysis of the governmental institutions and usages of the France that we know to-day, it is necessary to take a backward glance at the nature and extent of the political change which the Revolution wrought, and at the principal stages through which the political experience of the nation passed before the stability and maturity of the Third Republic were reached. An additional reason for taking up France next

in order after England is that the institution or form that dominates the governmental organization of both states is the same, namely, the cabinet system. The two governments are sufficiently alike to make comparisons and contrasts both interesting and instructive.

The political system which the Revolution overturned was the product of eight hundred years of growth. On account of her less isolated position, France was played upon by more unsettling forces in medieval and modern times than was England. But it would be easy to exaggerate the difference between the two states so far as the mere matter of political and institutional continuity is concerned; the changeableness of governmental forms which seemed a main French characteristic between 1789 and 1875 found no counterpart in the history of the country in earlier centuries. The principal features of this historic political system can be stated briefly. First, the government was an absolute monarchy. It is true that certain fundamental laws of the realm, established for the most part by custom, had become real constitutional principles, and as such were considered binding upon the king himself. One of these regulated the succession to the throne; another forbade alienation of the royal domain. But there was a good deal of doubt as to what rules belonged in this category, and the freedom of the sovereign suffered no great limitation. Gathering strength in the hands of strong-willed monarchs such as Philip Augustus, Louis IX, and Philip the Fair, the royal authority reached its apogee in *le grand monarque*, Louis XIV, in the second half of the seventeenth century — a king who subordinated everything to dynastic interests, who surpassed all contemporary despots in his sense of unbounded and irresponsible dominion, and who showered every favor upon the bishop-courtier Bossuet for writing a book which made him the chief exponent of the theory of absolute monarchy by divine right.[1] "We hold our crown from God alone," reads an edict of Louis XV in 1770; "the right to make laws, by which our subjects must be conducted and governed, belongs to us alone, independently and unshared."

Second, the country's affairs were administered by a vast, centralized, bureaucratic body of officials — notably the *intendants* of the généralités and their agents, the *sub-délégués* —

[1] *La politique tirée des propres paroles de l'Écriture sainte*, or "Politics as derived from the very Words of the Holy Scriptures," published soon after the author was appointed tutor to the dauphin in 1670. See Dunning, *Political Theories from Luther to Montesquieu*, 325–330.

under the direction of the chancellor, the controller-general of finances, and the secretaries of state for the royal household, foreign affairs, war, and marine at Paris.[1] Together with a varying number of influential men who held no portfolio, these six ministers composed a Royal Council, of some forty members in 1789, which was in some respects more truly the center of power than the king himself. The members of the administrative hierarchy could rarely be controlled or called to account by the people, and local self-government was rather a tradition than a fact.[2]

Third, the Estates General, which, speaking broadly, grew up in France contemporaneously with the rise of the English Parliament, had failed to win for itself any such position as had been arrived at by its counterpart beyond the Channel. In the first place, it had never outgrown the medieval type of assembly organized on the basis of "estates," or orders, with separate interests and distinct traditions. It sat and deliberated in three separate bodies, or chambers, one representing the nobility, one the clergy, and a third the *tiers état*, "third estate," or bourgeois, middle class. The first two estates usually agreed on proposals submitted to them, and could always outvote the *tiers état*. In the second place, whereas the English Parliament met as a rule once a year in the fourteenth and fifteenth centuries, and on an average at least once every five or six years under the Tudors and Stuarts, the Estates General in France was summoned at extremely irregular intervals, which grew gradually longer, until after 1614 it was summoned no more at all until financial necessity forced the government's hand in 1789. Finally, the assembly never became anything more than a body of men who were agents in relation to their constituents, petitioners in relation to the king, with no general, independent powers, either fiscal or legislative. Regional "estates" survived in Burgundy, Brittany, and Languedoc, and a few other provinces in 1789, but they were hardly more than subsidiary administrative agencies.

Fourth, the entire political system was based on inequality and privilege. The government was notoriously arbitrary and capricious, and it not only "incessantly changed particular regulations or particular laws," as de Tocqueville tells us, but applied a given law in no general or uniform manner to all indi-

[1] Dupriez, *Les ministres*, II, 249–253; P. Boiteau d'Ambly, *L'état de la France en 1789* (Paris, 1861), 111–143.

[2] See p. 466.

viduals. There were no certain guarantees of personal freedom; under a *lettre de cachet*, or "sealed letter," any one might be arrested summarily and held in prison until it suited the convenience of the authorities to inquire into the merits of his case. In return for a small collective *don gratuit* (which sometimes was not actually paid), the clergy as a class was exempt from taxation. The nobles paid only such nominal taxes as they bargained with the officials to pay; and both they and the clergy enjoyed many other privileges, including a monopoly of high offices and honors and the feudal, customary right of exploiting the peasantry.[1]

Growth of Political Liberalism in the Eighteenth Century. — The government of the Bourbon kings was thus autocratic, wasteful, corrupt, and burdensome; and in 1789 a tide of protest which had long been rising swept over the head of the luckless Louis XVI and engulfed the whole order of things of which he was a part. This protest came fundamentally from the great body of the people, and especially from the intelligent, ambitious, and well-to-do *bourgeoisie*, which supplied most of the constructive statesmanship of the Revolution. It found most lucid and forceful expression, however, in the writings of a remarkable group of critics, essayists, dramatists, and novelists, known collectively as the *philosophes*. Beginning with the light satire of Montesquieu's *Lettres Persanes* (1721), this literary and philosophic appraisal of the existing state of things, — in government, law, the Church, education, economic organization, and practically everything else — advanced by stages to the bitter denunciations of Voltaire in the "Philosophic Dictionary" (1764) and the "Essay on Republican Ideas" (1765). Criticism was not merely destructive; the underlying aim was the reorganization of society, including government, on the rules of reason and natural justice. In the political field the new thought took, indeed, widely different forms. Voltaire and the Physiocrats, sprung from the privileged classes and careless of political rights, would perpetuate the absolute power of the king, insisting only that the prince use his authority to

[1] The state of government before the Revolution is more fully described in *Cambridge Modern History*, VIII, Chap. ii, and E. J. Lowell, *The Eve of the French Revolution* (Boston, 1892), Chaps. i, ii, viii. Important French works include A. de Tocqueville, *L'Ancien régime* (Paris, 1856), trans. by H. Reeve under the title *State of Society in France before the Revolution of 1789 and the Causes which led to that Event* (new ed., Oxford, 1894), and H. A. Taine, *Les origines de la France contemporaine: L'Ancien régime* (Paris, 1876), trans. by J. Durand as *The Ancient Régime* (New York, 1876).

accomplish desirable social and economic reforms. Montesquieu, believing that the merit of the English system of government arose from a division of powers among substantially independent executive, legislative, and judicial authorities, and failing to perceive that the fast-developing cabinet system was creating exactly the opposite situation, denounced despotism and argued for a separation of powers, yet considered strong monarchy a necessary and desirable feature of government in a large country such as France.[1] The more plebeian and radical-minded Rousseau, starting with the concept of a primeval state of nature in which men led a care-free, non-social existence, and assuming that government was originally the product of voluntary contract, developed the doctrine that sovereignty resides only in the body politic, that law is the expression of the public will, that government is established by the sovereign people as its agent to execute the law, that the ideal state would be one in which all functions of government were discharged by the people acting directly, and that where, as in large states, some scheme of delegation of authority becomes necessary, the basis of representation should be men considered as individuals, not classes or interests as in England.[2]

The writings of the philosophers were important rather as expressing what great numbers of French people were thinking and feeling than as propounding views that were original or novel. Every cardinal doctrine — limited monarchy, separation of powers, and even popular sovereignty — had been voiced by political thinkers now and again from Aristotle onwards. More immediately, the French eighteenth century political philosophy was drawn mainly from England. For hundreds of years the English constitution developed without attracting much attention from continental Europe. Its characteristics and advantages were early set forth in English books that were not unknown to scholars on the other side of the Channel,[3] and the French writers who in the sixteenth century made a notable effort to introduce the principles of political liberty in their country explicitly invoked English experience and example.[4] But

[1] *De l'esprit de lois*, published at Geneva in 1748. On Montesquieu's political thought see Dunning, *Political Theories from Luther to Montesquieu*, Chap. xii.

[2] *Le contrat social*, published at Amsterdam in 1762. See Dunning, "The Political Theories of Jean Jacques Rousseau," in *Polit. Sci. Quar.*, Sept., 1909.

[3] Notably Sir John Fortescue's *De laudibus legum Angliae*, published early in the sixteenth century (see p. 26), and Thomas Smith's *De republica Anglorum libri tres*, published in 1630.

[4] The so-called Monarchomachs. See Dunning, "The Monarchomachs," in *Polit. Sci. Quar.*, June, 1904.

late in the century Jean Bodin, who knew more about the English government than any of his contemporaries, pronounced the system bad as being "mixed," and restated the argument for absolutism in a form which held general support for upwards of two hundred years.[1]

The eighteenth century brought a different attitude. The philosophic spirit, as carried into the field of political science, led to a general inquiry into the governments and laws both of antiquity and of the contemporary world. Some of the reformers, as Rousseau and Mably, found their models in the ancient Greek and Roman republics. But most of them drew heavily upon England for ideas, and even for institutional forms. Montesquieu considered that England, through a happy combination of circumstances, had largely solved the problem of political liberty, and he expounded what he conceived to be the fundamental feature of the English constitution, *i.e.*, the separation of executive, legislative, and judicial powers, with a view to influencing reconstruction in France on similar lines. Voltaire lived in England three years and in his writings continually referred admiringly to English life and institutions. Montesquieu, Rousseau, and in fact every French writer who dealt extensively or systematically with political matters, drew heavily upon John Locke, whose *Two Treatises of Government*, published in 1689, embodied the most scientific defense of the English Revolution — and therefore of the English constitution in its modern, liberalized form — ever made. The social contract, government with limited authority, separation of powers, popular sovereignty, the right of resistance to tyranny, inalienable individual rights to life, liberty, and property — these are all in Locke, and all were taken over and amplified by the French school.[2] Shortly before the Revolution, French knowledge of and interest in English political principles and usages were yet farther increased by de Lolme's *Constitution de l'Angleterre*, published in 1771, and by Blackstone's *Commentaries on the Laws of England*, published in 1765, and soon circulated widely across the Channel in French translation.[3]

[1] *De republica libri sex*, published in 1576. See Dunning, *Political Theories from Luther to Montesquieu*, Chap. iii.

[2] The political theory underlying the American Revolution was also derived mainly from Locke and other English liberals. It was confirmed and strengthened by French influences, but it was mainly of English origin. See C. E. Merriam, *History of American Political Theories* (New York, 1903), 88–95.

[3] French political thought in the eighteenth century is fully described in P. Janet, *Histoire de la science politique dans ses rapports avec la morale* (3d ed., Paris, 1887), II, 263–512, 635–692. A good brief survey is J. H. Reed, "Constitutional Theories

Political Character of the Revolution. — Two currents of liberalism, one French and the other English, thus flowed together in the second half of the eighteenth century, and the ever-swelling stream beat upon the retaining walls of tradition, privilege, and absolutism until at length they could withstand the pressure no longer. The old régime in France collapsed; a new order arose, which, notwithstanding long unsettlement and many sharp reverses, eventually established itself securely; the new principles, "by a mighty and irresistible contagion," as a French writer puts it, won the greater part of the nations of Europe and America, which gradually modeled, or remodeled, their constitutions on the same fundamental pattern; and thus was constituted the common fund of principles and institutions in the western world which represents modern liberty.[1]

Only three or four of the most fundamental contributions of the Revolution itself can here be mentioned. The first was a body of general political principles, drawn mainly from the philosophical sources that have been indicated, and set forth with great clarity and force in the first part of the "Declaration of the Rights of Man and of the Citizen," adopted by the National Assembly on August 26, 1789. A few of these principles were: (1) men are born free and remain free and equal in rights; (2) the aim of all political association is the preservation of the natural and imprescriptible rights of man, namely, liberty, property, security, and resistance to oppression; (3) sovereignty resides in the nation, and no body or individual may wield any authority that does not proceed directly from the nation; (4) liberty consists in the freedom to do everything which injures no one else; (5) law is the expression of the public will, and every person has a right to participate, personally or through his representative, in making it; (6) law must be the same for all, whether it protects or punishes.[2] A second, and closely related, contribution was a comprehensive and authori-

in France in the Seventeenth and Eighteenth Centuries," in *Polit. Sci. Quar.*, Dec., 1906.

[1] A. Esmein, *Éléments de droit constitutionnel français et comparé* (4th ed., Paris, 1906), 42.

[2] This Declaration, framed in response to popular demand as voiced in the *cahiers*, was eventually incorporated in the constitution of 1791. The text, in English translation, is printed in F. M. Anderson, *Constitutions and other Select Documents Illustrative of the History of France, 1789–1907* (2d ed., Minneapolis, 1908), 59–61. See J. H. Robinson, "The French Declaration of the Rights of Man," in *Pol. Sci. Quar.*, Dec., 1899; G. Jellinek, *Die Erklärung der Menschen- und Bürgerrechte* (2d ed., Leipzig, 1904), trans. by M. Farrand under the title *The Declaration of the Rights of Man and of the Citizen* (New York, 1901); and V. Marcaggi, *Les origines de la déclaration des droits de l'homme en 1789.*

tative restatement of the "natural and inalienable" rights of the individual. This enumeration was most clearly made in the foregoing Declaration of Rights; and among the rights specially emphasized were freedom from arrest or imprisonment except according to the forms prescribed by law; freedom of religious belief; freedom of speech; freedom of literary expression and of the press; participation (personally or by representative) in the voting of all taxes; immunity of property from confiscation except under legally ascertained public necessity, and after equitable compensation.[1]

A third contribution was the doctrine of the written constitution. Prior to the eighteenth century, it was commonly taken for granted that fundamental or organic law, like ordinary law, should rest on the basis of custom, and hence remain unwritten, except for now and then a rule or stipulation which, as a result of a great public contract or in some other manner, should find its way into writing. The ultra-democratic elements in England at the middle of the seventeenth century wanted a written constitution, and two such instruments were put in operation, one in 1653 and the other in 1657.[2] This movement, however, was sporadic; and, as we have seen, the historic English constitution has never, as a whole, been reduced to written form. Outside of England, political thinkers and leaders in the eighteenth century turned generally, however, to the plan of a written constitution, so constructed as to embody in a systematic way the fundamental principles, forms, and restrictions under which a particular government should be carried on. The idea commended itself in a special degree to the French reformers, partly because they were becoming convinced of the general superiority of written over customary law, partly because they looked upon the promulgation of a written constitution newly decreed by the sovereign nation as in effect a renewal of the social contract, and partly because they considered that a written constitution was a very desirable means of acquainting the people with their rights and developing a strong attachment thereto. There was the added influence of the example of America, where within the space of hardly more than a decade two federal constitutions and more than a dozen state constitutions were put into operation by direct or indirect authority of the people.

[1] On the general question of individual rights see Esmein, *Éléments de droit constitutionnel* (4th ed.), 440–467, and L. Duguit, *Manuel de droit constitutionnel* (2d ed., Paris, 1911), 200–286.

[2] See p. 27.

In accordance with a general demand in the *cahiers*, the National Assembly set about the construction of a written constitution in 1789. The instrument was not completed until 1791. But from that time France, despite her political instability, has lived continuously (save for insignificant intervals) under a written constitution. She, furthermore, became — so far as continental Europe is concerned — the mother of written constitutions. During her Revolutionary and Napoleonic expansion she covered all of western Europe south of the Baltic with constitutions drawn on the model of her own; and when her power receded to its former limits, the idea had been indelibly impressed upon the progressive elements in Germany, Italy, Spain, and elsewhere that the prime condition of liberty is written organic law.[1]

A fourth important contribution was the conception of republicanism as a practicable form of government for France, and hence, by implication, for other large and venerable European states. The relative merits of republican and monarchical political systems had been a subject of discussion from Plato and Aristotle onwards, and notable experiments had been made with republican government by ancient Rome, by the Italian city states of the Middle Ages, by the Dutch provinces, by Switzerland, by England in the seventeenth century, and, more recently, by the United States of America. As a group, the eighteenth century philosophers favored monarchy. Montesquieu conceded that no single form of government is best under all conditions, but he held that a republic requires not only a small territory but a high level of public virtue and an absence of luxury and large fortunes. Rousseau considered democracy workable only in small and poor states. Voltaire, too, thought of republicanism only in terms of Greek city states and Swiss cantons, and said that the regeneration of France must come from benevolent kingship. Turgot pronounced all republics of history disguised aristocracies and argued that monarchy is peculiarly adapted to promote the general happiness of mankind.

The establishment of the American republic roused keen interest in France, but it did not turn the current of political reform in the direction of republicanism. The *cahiers* of 1789 voiced no demand for a republic. The National Assembly was thoroughly monarchist, and the constitution which it pro-

[1] On written constitutions in general see Willoughby, *Government of Modern States*, Chap. vi, and W. A. Dunning, "European Theories of Constitutional Government after the Congress of Vienna," in *Polit. Sci. Quar.*, Mar., 1919. The subject is considered in relation to France in Esmein, *Éléments de droit constitutionnel* (4th ed.), 468–502.

mulgated in 1791 preserved the monarchy, although shorn of many earlier prerogatives. The trend of events, however, — the vacillations and ultimate flight of the king, the defiance of popular opinion by the queen, the intrigues of the *émigrés* — inevitably stimulated republican sentiment. There was a distinct republican party as early as the autumn of 1790; by midsummer of 1791 the radical elements were turning *en masse* to the new doctrine; and although the Legislative Assembly, which practically governed France during the brief life of the constitution of 1791, was monarchical, the whole course of its policy was such as to make the continuance of monarchy impossible. On September 21, 1792, the newly chosen Convention, convinced that no other course was possible, unanimously decreed the abolition of monarchy and the establishment of a democratic, unitary republic. During the next few years the republican gospel was carried by French armies and reformers into all of the surrounding countries, and new or reconstructed republics sprang up on every hand; and, although these creations perished, and the parent republic itself gave way before the monarchical aspirations of Napoleon, republicanism as a creed and a program took a wholly new place in European political life.[1]

Revolutionary and Napoleonic Constitutions. — As for France herself, the nation, having suddenly severed its political ties with the past, entered upon upwards of a century of remarkable instability, experimentation, and change. Seven distinct constitutions were put into operation within the space of eighty-four years; prior to the establishment of the Third Republic, no one of them lasted as long as two decades. Each of these organic laws, none the less, contributed something to the nation's political experience, and before turning to the constitutional system of the present day the salient features of these earlier instruments should be noted.[2]

The Revolution itself produced three successive constitutions: (1) that of September 3, 1791, prepared by the National

[1] H. A. L. Fisher, *The Republican Tradition in Europe* (New York, 1911), Chap. iv. The fullest and most authoritative account of the growth of republicanism during the French Revolution is contained in F. A. Aulard, *Histoire politique de la révolution française* (Paris, 1901), trans. by B. Miall under the title *The French Revolution, a Political History* (London, 1910), II, Chaps. ii–iv.

[2] The texts of all French constitutions and fundamental laws since 1789 are brought together conveniently in L. Duguit et H. Monnier, *Les constitutions et les principales lois politiques de la France depuis 1789* (Paris, 1898). Other editions are F. Hélie, *Les constitutions de la France* (Paris, 1880), and E. Pierre, *Organisation des pouvoirs publics; recueil des lois constitutionnelles et organiques* (Paris, 1902). For English versions see Anderson, *Constitutions*. There is a good summary in M. Block, *Dictionnaire général de la politique* (Paris, 1884), I, 494–518.

(or Constituent) Assembly and overthrown by the uprising of August 10, 1792; (2) that of February 15, 1793, made by the Convention but never put into effect; and (3) that of 5 Fructidor of the Year III (August 22, 1795), prepared also by the Convention and in operation from September 23, 1795, to the *coup d'état* of 18 Brumaire of the Year VIII (November 9, 1799). The first of these instruments provided for limited monarchy, ministers subject to impeachment, and a unicameral *Corps Législatif* consisting of 745 members elected for two years in the newly created departments, on the principle of *scrutin de liste*, by the indirect vote of male citizens twenty-five years of age and upwards who paid direct taxes every year equivalent to three days' labor.[1] The constitution of 1793 was a radical instrument providing not only for a republic, but for an ultra-democratic governmental system, whose principal features were: (1) a unicameral legislature elected indirectly by manhood suffrage for one year, (2) an executive council of twenty-four members chosen by the legislature from nominees offered by the secondary electors in the departments, and (3) the reference of proposed laws to primary assemblies of citizens for definitive action. Although ratified by the people, this constitution, as has been stated, was never put into effect.[2] The instrument of 1795, which was similarly ratified by popular vote, was also republican, but less radical. It vested the legislative power in a bicameral parliament, consisting of a Council of Five Hundred and a Council of Elders; although the lower chamber alone could originate measures, and the upper could only pass or reject, but not amend, them. The members of both houses were chosen by the people indirectly, under suffrage arrangements somewhat more liberal than those of 1791. The term was three years, and one third of the membership was renewed every year. The executive consisted of a Directory of five persons chosen for a term of five years, one member retiring annually. Directors were selected by the Council of Elders from a double quota of nominees offered by the Council of Five Hundred. The principal innovation was the bicameral organization of the legislature, which until now had been generally opposed by French reformers.[3]

The constitution of the Year VIII (1799) was drawn up by

[1] For changes made in the administrative and judicial systems see pp. 466–467. The constitution of 1791 is in Duguit et Monnier, *Les constitutions*, 1–35, and Anderson, *Constitutions*, 58–95.

[2] Duguit et Monnier, *Les constitutions*, 66–78; Anderson, *Constitutions*, 171–184.

[3] Duguit et Monnier, *Les constitutions*, 78–118; Anderson, *Constitutions*, 212–214.

Napoleon and Siéyès, aided by two commissions, shortly after the *coup d'état* which made the Corsican the virtual ruler of the country; and, amended by certain organic enactments, it formed the fundamental law under which Napoleon governed France until his abdication in 1814. The scheme of government for which it provided, if not deliberately shaped as a veil for despotism, readily became such in practice. The simple bicameral legislature of 1795–99 was abandoned, and its functions were divided among as many as four distinct bodies: a Tribunate, of one hundred members elected for five years, which gave preliminary consideration to legislative proposals; a *Corps Législatif*, of three hundred members elected for five years, which adopted or rejected these measures; a Senate, of eighty life members, which determined the constitutionality of the measures as passed and served as an electoral body; and a Council of State charged with preparing and advocating legislative and administrative measures under the First Consul's direction.[1] Executive power was lodged in three consuls, appointed by the Senate for ten years and indefinitely reëligible. The plan of a plural executive was thus nominally retained. But the constitution made the First Consul really supreme and gave his colleagues only a "consultative voice"; and in practice "Citizen Bonaparte," who was named in the instrument as First Consul, easily gathered to himself complete control. The provision that no edict of the government should have effect unless signed by a minister was of no practical consequence; and it was a change of form rather than of fact when, in 1802, Napoleon was made consul for life, and even when, in 1804, the Consulate was converted into the Empire.[2]

The Constitutional Charter (1814–48). — On May 3, 1814, — three weeks after Napoleon signed the act of abdication — the restored Bourbon king, Louis XVIII, entered Paris, and six weeks later a new constitution, prepared by a commission consisting of three representatives of the crown, nine senators, and nine members of the *Corps Législatif*, was promulgated. With some important changes, introduced mainly in 1830, this Consti-

[1] The Council of State was appointed by the First Consul. The senators were chosen by coöptation, and the members of the Tribunate and Legislative Body were selected from a list of eligibles presented, by a very roundabout process, by the people.

[2] Duguit et Monnier, *Les constitutions*, 118–120; Anderson, *Constitutions*, 270–281. The constitution of 1795, in 377 articles, was one of the lengthiest instruments of the kind ever formulated; that of 1799, in 95 articles, was notably briefer.

tutional Charter remained the fundamental law of France until the revolution of 1848. The new system of government showed strong traces of English influence. Indeed, it was designed to be a liberal, constitutional monarchy on the English model, and it is from this time that one dates the deliberate attempt in France to build up a cabinet system based on English principles. There was no desire to adopt the English scheme of responsible government with all of its consequences and implications. But the system set up admitted of close comparison, and it was decidedly more liberal than that which had passed away with Napoleon. The king was endowed with the power to issue ordinances, make appointments, declare war, conclude treaties, and initiate all legislation. But no tax could be levied and no law could be made without the assent of Parliament, and the ministers were declared not only liable to impeachment but "responsible." The bicameral principle was now definitely revived, and Parliament was made to consist of a Chamber of Peers, composed of appointees of the crown in heredity or for life, and a Chamber of Deputies, composed of representatives elected in the departments for five years, one fifth retiring annually. Parliament was required to meet at least once every year; and, although lacking direct legislative initiative, either house might petition the king to submit a measure upon any specific subject.[1]

The Charter prescribed the qualifications of voters and of deputies, but did not define the manner in which deputies should be chosen. The lack was supplied by an electoral law of 1817, which provided that the electors — men thirty years of age and upwards who each year paid a direct tax of at least three hundred francs — should assemble in the principal town of the department and there choose on a general ticket, *i.e.*, by *scrutin de liste*, whatever number of deputies the department was entitled to elect at the given time. The system proved of pronounced advantage to the liberal elements, whose strength lay mainly in the towns, and in 1820, the conservatives forced through a measure increasing the membership of the Chamber from 258 to 430 and substituting the *arrondissement* for the department as the electoral area. Each *arrondissement* became a single-member district, and the *arrondissements* as such returned 258 members. The remaining 172 were elected at the chief departmental towns by the voters of the department who paid the most taxes, an arrangement under which some twelve thousand of the wealthier

[1] Duguit et Monnier, *Les constitutions*, 183–190; Anderson, *Constitutions*, 457–465.

electors gained a double vote. Voting was by ballot, but the elector was required to write out his ballot in the presence of an appointee of the government and to place it in his hands unfolded.[1] A law of 1824 further altered the system by making the Chamber renewable integrally for a term of seven years.

Upon the abdication of Charles X as a result of the uprising of 1830, a parliamentary commission revised the Charter, and the new sovereign, Louis Philippe, accepted it in its liberalized form. The preamble of the original instrument, which indicated that the constitution was a grant from the crown, was dropped. Suspension of the laws by the sovereign was prohibited, and both chambers were given the right to initiate legislation. The sessions of the Chamber of Peers were made public, and a law of the following year terminated the creation of hereditary peerages. The integral renewal of the Chamber of Deputies was continued, but the term was restored to five years, and the age required of electors was reduced from thirty to twenty-five years. Finally, a law of 1831 lowered the tax qualifications for voters from three hundred francs to two hundred, and for certain professional classes to one hundred. This doubled the electorate, although even now the voters formed only one-hundred-fiftieth of the population. The government of the Orleanist period was not much more democratic than that which it supplanted; at the most, it was a government by and for the well-to-do middle class.[2]

The Second Republic and the Second Empire. — Following the collapse of the Orleanist monarchy as a result of the uprising of February, 1848, France entered upon a period which was almost as unsettled politically as the years 1789–95. For half a decade the nation again experimented with republicanism, only to emerge a monarchy, an empire, and the dominion of a Bonaparte. The provisional government, which was one of the first products of the revolution, tentatively proclaimed a republic, and the people were called upon to elect, under a system of direct manhood suffrage, an assembly to frame a constitution. The elections — the first of their kind in the history of France — were held on April 23, 1848, and the National Constituent Assembly, consisting of nine hundred members, of whom eight hundred were moderate republicans, met on May 4 in Paris. During the summer the draft of a constitution, prepared by a

[1] Duguit et Monnier, *Les constitutions*, 206–209.

[2] *Ibid.*, 213–218, 219–230. Anderson, *Constitutions*, 507–513. See G. Weill, *La France sous la monarchie constitutionnelle, 1814–1848* (new ed., Paris, 1912).

committee of eighteen, was duly debated, and on November 4 it was adopted by a vote of 739 to 30.

The constitution of 1848 declared the republic perpetual and the people sovereign. It asserted, furthermore, that the separation of powers is the first condition of a free government. It provided for a legislative assembly consisting of a single chamber of 750 members [1] chosen integrally for three years, directly by secret ballot on the principle of departmental *scrutin de liste*, and by electors whose only necessary qualifications were the age of twenty-one and upwards and full possession of civil rights. Executive power was vested in a president of the republic, elected for a term of four years by direct and secret ballot, and by absolute majority of all votes cast in France and Algeria. Under stipulated conditions, *e.g.*, if no candidate should receive an absolute majority and at the same time a total of at least two million votes, the president was to be chosen by the Assembly from the five candidates who had polled the largest votes; and a president could not be reëlected until he had been out of office at least four years. The powers given the president were large and included proposing laws, negotiating and ratifying treaties with the consent of the Assembly, appointing and dismissing ministers and other civil and military officers, and disposing of the armed forces. On the functions and relations of the ministers the constitution was curiously vague, and whether the instrument might legitimately be construed to make provision for a cabinet system of government was a much discussed question throughout the brief period of its duration.[2]

In December, 1848, Louis Napoleon, nephew of Napoleon I, was chosen president by a heavy majority, and ten days later he assumed office. In May, 1849, an Assembly was elected, of whose members two thirds were thoroughgoing monarchists; so that, as one writer has put it, both the president and the majority of the Assembly were, by reason of their very being, enemies of the constitution under which they had been elected.[3] The new order, furthermore, failed completely to strike root throughout the nation at large, and the collapse of the republic became only a question of time. An electoral law of May 31,

[1] Including representatives of Algeria and the colonies.

[2] See Dupriez, *Les ministres*, II, 308–312. The text of the constitution of 1848 is in Duguit et Monnier, *Les constitutions*, 232–246, and Anderson, *Constitutions*, 522–537. See also Fisher, *Republican Tradition in Europe*, Chap. viii, and especially E. N. Curtis, *The French Assembly of 1848 and American Constitutional Doctrine* (New York, 1918).

[3] Hazen, *Europe since 1815*, 201.

1850, requiring of the elector a fixed residence of three years instead of six months, upset the recently established suffrage arrangements and reduced the electorate by three millions, or practically one third; and on December 2, 1851, a carefully planned *coup d'état* took place, when the Assembly was dissolved, the franchise law of 1849 was restored, and the people, gathered in primary assemblies, were called upon to intrust to the president power to revise the national constitution.[1] By a vote of 7,439,216 to 640,737, the electorate complied. Thereafter, although continuing officially through another year, the republic was in reality dead. On November 7, 1852, the veil was thrown off. A *senatus-consulte* decreed the reëstablishment of the Empire,[2] and eleven days later the people, by a vote of 7,824,189 to 253,145, sanctioned what had been done. On December 2, the anniversary of Austerlitz, Napoleon III was proclaimed emperor of the French.

Meanwhile, in March, a constitution, nominally republican, but in reality strongly resembling that in force during the later years of Napoleon I, had been put into operation, and the substitution of an emperor for a president upon whom had been conferred a ten-year term was only a matter of detail. A *senatus-consulte* of December 25 made the necessary adjustments; and the constitution of 1852, with occasional modifications, remained the fundamental law of France until the collapse of the Second Empire in 1870. The emperor was endowed with very extended powers. His control of the administrative system was made practically absolute. He commanded the army and navy, decided upon war and peace, concluded treaties, and granted pardons. He alone had the power to initiate legislation and to promulgate the laws. To him alone all ministers were responsible; not a shred of cabinet government remained. There were two legislative chambers: a *Corps Législatif* of 251 members elected by direct manhood suffrage every six years, and a Senate composed of cardinals, admirals, and other *ex-officio* members, together with life appointees of the emperor. The powers of the Senate were exercised in close conjunction with the head of the state and were of some importance, but those of the popular chamber amounted to little; so that the liberal suffrage arrangements were of small practical effect.[3]

[1] Anderson, *Constitutions*, 538–543.

[2] Duguit et Monnier, *Les constitutions*, 290–292; Anderson, *Constitutions*, 560–561.

[3] Duguit et Monnier, *Les constitutions*, 274–280; Anderson, *Constitutions*, 543–549.

For upwards of a score of years the illusion of popular government was cleverly, and more or less successfully, maintained. The country was prosperous and the government, if illiberal, was on the whole enlightened. Discontent, none the less, frequently manifested itself, and during the second half of the reign the Emperor more than once found it expedient to make some concession to public sentiment. In the later sixties he was compelled to relax the vigor of the laws dealing with the press and with political meetings, and in 1869–70 he was brought to the point of approving a series of measures which promised a liberalization of the entire governmental system. One of these measures was a *senatus-consulte* of September 8, 1869, opening the sittings of the Senate to the public, giving the Legislative Body the right to elect its own officials, and nominally reëstablishing the cabinet system.[1] On account of the fact, however, that ministers were not permitted to be members of either the Legislative Body or the Senate, and that they were declared to be still responsible to the crown, the immediate effects of the last-mentioned feature of the reform were slight. A *senatus-consulte* of April 20, 1870 (approved by a plebiscite of May 8), made other and more important changes. In the first place, the Senate, which hitherto had been virtually an Imperial council, was erected into a legislative chamber coördinate with the Legislative Body, and both houses received the right to initiate legislation. In the second place, the provision that the ministers should be solely dependent upon the emperor was stricken from the constitution, thus clearing the way for a more effective realization of the principle of cabinet government. Finally, it was stipulated that the constitution should henceforth be amended only with the express approval of the people. These reforms, however, were belated. They were grudgingly conceded only after the popularity of the Emperor and of his system had been strained to the breaking point, and the almost immediate beginning of the war with Germany gave no time in which to test their efficacy.[2]

[1] Duguit et Monnier, *Les constitutions*, 307–308; Anderson, *Constitutions*, 579–580.

[2] The measure of April 20, 1870, is in Duguit et Monnier, *Les constitutions*, 308–314, and Anderson, *Constitutions*, 581–586. The period is admirably surveyed in H. Berton, *L'évolution constitutionnel du second empire* (Paris, 1900). Two contemporary books in which the faults of the Second Empire are analyzed and proposed remedies, including the establishment of a republic, are duly considered, are Prévost-Paradol, *La France nouvelle* (Paris, 1868), and Duc de Broglie, *Vues sur le gouvernement de la France* (Paris, 1870). The latter was written in 1861. Both authors were moderate monarchists. See Esmein, *Éléments de droit constitutionnel* (4th ed.), 530–531, and Hanotaux, *Contemporary France*, III, 318–322.

CHAPTER XXI

THE CONSTITUTION OF THE THIRD REPUBLIC

Collapse of the Second Empire and Problem of a New Government. — The Third Republic was set up under circumstances that gave promise of even less stability than was revealed by its predecessors of 1792 and 1848. Proclaimed in the dismal days following the French defeat at Sedan, it owed its existence, at the outset, to the fact that, with the capture of Napoleon III by the Prussians and the utter collapse of the Empire, there had arisen, as Thiers put it, "a vacancy of power." The proclamation was issued from the Hotêl de Ville September 4, 1870, by a self-appointed group of deputies of the Left, (led by Gambetta and Favre), when the war with Prussia had been in progress seven weeks; and during the remaining five months of the contest sovereign authority was exercised by a Provisional Government of National Defense, with General Trochu at its head. Upon the capitulation of Paris, January 28, 1871 (followed by an armistice), elections were ordered for a national assembly, whose function would be to decide whether it was possible to continue the war or necessary to submit to peace, and in the latter case, what terms of peace should be accepted. There was no time for framing a new electoral system. Consequently, the electoral arrangements of the Second Republic, established by a law of March 15, 1849, were revived; and on February 8 an assembly of 758 members, representing both France and the colonies, was chosen by manhood suffrage.

When, on February 13, this National Assembly convened at Bordeaux, it found itself the sole repository of governmental authority. The emperor, the Senate, the *Corps Législatif*, the ministry — all were gone; never, even in 1792 and 1848, had the field been more clear of *débris* left by an old régime. Even the Government of National Defense, which, acting by the tacit consent of the nation, had held things together, not without glory, during the "vacancy of power," dissolved immediately after it gave the country an elected assembly, as it had pledged itself to do. In view of these facts, the Assembly found itself

at once possessed of full powers as a government. It was the only legal representative of the national sovereignty, and there was no constitution to restrict its authority. No definite restraints had been imposed by the electorate, either on what the body might do or on the duration of its power. The result was that the Assembly forthwith became the government, and it remained such for approximately five years.

At all events, it held full control of the political machinery and itself acted as the national legislature. It might have kept the executive power, too, in its own hands, by exercising it through committees, as the Long Parliament in England, the Continental Congress in America, and the French Convention of 1792–95 had done in a similar situation. On this point, however, it chose a different course, partly out of deference to the doctrine of separation of powers, partly because events had in advance designated a titulary of the executive power in the person of the historian and parliamentarian Thiers. Consequently, on February 17, the Assembly conferred on Thiers the title of " chief of the executive power," and, having voted almost unanimously for peace, instructed him to enter upon negotiations. The executive function was delegated without fixed time; it was to be exercised by the chief with the aid of ministers whom he appointed; and it was revocable at the Assembly's will. For the time being, Thiers retained membership in the Assembly.[1]

More perplexing than the task of arranging for the immediate management of the country's affairs was the problem of a permanent governmental system. Most people assumed not only that the Assembly was entitled to exercise constituent power but that one of its main duties was to give France a constitution; although from the first there were those who held that, in the absence of an express mandate from the nation, such a proceeding would be a sheer assumption of authority. The Assembly, as a whole, had no doubts upon its rights in the matter, although it was disposed to postpone the work until the treaty of peace should have been signed. Discussion of the subject, however, could not long be repressed, and it soon became apparent that upon the fundamental question of what form the new government should take there were two main proposals. One was monarchy, of a more

[1] The earlier work of the National Assembly is fully and authoritatively described in G. Hanotaux, *Histoire de la France contemporaine* (Paris, 1903–08), trans. by J. C. Tarver and E. Sparvel-Bayly under the title *Contemporary France* (New York, 1903–09), I, Chaps. i–vi.

or less limited sort; the other was republicanism. The monarchists fell into three groups. A party of Legitimists, *i.e.*, adherents of the old Bourbon monarchy, wanted a kingdom under the Count of Chambord, grandson of the Charles X who was deposed at the revolution of 1830. A party of Orleanists desired a restoration of the house of Orleans, overthrown in 1848, in the person of the Count of Paris, a grandson of the citizen-king Louis Philippe. A smaller group of members who, despite the discredit which the house of Bonaparte had suffered as a result of the war, remained loyal to the Napoleonic tradition, was committed to a revival of the prostrate empire of the captive Napoleon III.

The republicans, who were strong in Paris and in the southwestern parts of the country, aimed, of course, to prevent the reappearance of monarchy in any form. They were outnumbered five to two in the Assembly,[1] and on this account it was chiefly they who argued that the body had received a limited mandate and had no authority to frame a constitution. They said, as was true, that the members had been chosen primarily for their views as to peace rather than as to constitutional forms. Their outlook, even in the present Assembly, was, however, far from hopeless, in view of the division in the monarchist ranks; and when the triumph of the republican cause became reasonably assured, most of them acquiesced in the Assembly's exercise of constituent power.

Origins of a Cabinet System: the Rivet Law. — After the treaty of Frankfort was signed, on May 10, the primary object for which the Assembly was elected could be regarded as attained. Despite republican demands that the body declare its task completed and give way to a new agency specially chosen for the work of constitution-framing, there was, however, no indication of purpose to pursue such a course. Already the body was actively instituting measures to aid the country's recovery from the effects of the war; it had transferred its seat from Bordeaux to Versailles, and had taken vigorous and effective steps to suppress the communard uprising of April and May in Paris.[2] Far from relinquish-

[1] Of avowed Legitimists there were about 150; of Bonapartists, not over 30; of Republicans, about 250. The remaining members were Orleanists or men of uncertain views. At no time was the full membership of the Assembly in attendance. See G. Weill, *Histoire du parti républicain en France de 1814 à 1870* (Paris, 1900).

[2] The Commune was a movement in protest against a centralized form of government, whether monarchist or republican. The communards wanted a system based on a federation of communes.

ing power, it gave every evidence of intention to keep its hand on the situation indefinitely, and to give the country the strong government that it needed while the work of constitution-making was going forward deliberately, and even leisurely.

A practical difficulty in the existing arrangements was the anomalous position of Thiers as chief executive, and of the ministers. With a view to organizing the government on a more definite basis, Charles Rivet, deputy for the Corrèze and friend of Thiers, introduced, on August 12, a resolution to the effect that Thiers should be given the title of president of the republic, that he should retain office for three years unless the Assembly should sooner be dissolved, and that the ministers should be made directly and completely responsible to the Assembly. The obvious intention was to introduce a cabinet system on the English model; the president, being immovable, would cease to be responsible, and the ministers would become the working, responsible executive. Although inclining strongly to the cabinet type of government, the Assembly was not ready to go as far as Rivet proposed, and the program was considerably altered before being adopted. As passed on August 31 (by a vote of 491 to 94), the Rivet law gave Thiers the title of president and declared the ministers responsible to the Assembly, yet reiterated the responsiblity of the president himself to that body and indicated that his powers, which were increased in several directions at this time, were to be construed as having been conferred for as long as the Assembly itself should last.[1]

This legislation was of some benefit. The title of president had a certain definiteness; the important principle of ministerial responsibility had been clearly proclaimed. Fundamentally, however, the new arrangements were less satisfactory than those which they supplanted. The Assembly had attempted the feat of making parliamentary responsibility reside at the same time in the titulary executive and in the ministers, and little experience was needed to prove that this was impossible. What actually happened was that Thiers kept up his close working relations with the Assembly, took a personal and active part in its deliberations, and bore direct responsibility to it, while ministerial responsibility was hardly more than a name.

To the general demand for further reconstruction of the system, Thiers added the weight of his voice in a message of November 13, 1872; and on March 13, 1873, a new and signif-

[1] Duguit et Monnier, *Les constitutions*, 315–316; Anderson, *Constitutions*, 604–606; Hanotaux, *Contemporary France*, I, Chap. iv.

icant law was passed. The original object of the measure was to restrict the personal intervention and influence of the president in the Assembly's proceedings. This might have been done by excluding him from membership. But Thiers objected so vigorously that the idea was not pressed. It might also have been accomplished by relieving the president of responsibility to the body. But the Assembly did not desire to do this. It believed, with the Duc de Broglie, that while in a constitutional monarchy the titulary head may be immune from responsibility, the president, or other head, of a republic must be responsible, by virtue of the very principle of republicanism.[1] Thus far in the world's experience the cabinet system had been confined to monarchies, and the French lawmakers of 1873 must not be too severely criticized for failing to see that the system can, indeed must, work under the same principles, whatever title the nominal head of the state may bear. As finally passed, therefore, the law of 1873 did not go farther than to define the conditions under which the president might address the Assembly and to throw special safeguards around the right of the body to deliberate on his proposals in his absence; although, by way of compensation, it bestowed on him a weak form of veto.

Failure of the Monarchist Programs. — Meanwhile Thiers, who began as a constitutional monarchist, came to the view that a republican form of government would be most likely to win the general support of the people, and late in 1872 he put himself definitely among the adherents of the republican program. This naturally aroused the monarchists; and when, on May 19, 1873, Dufaure (vice-president of the council of ministers, and an appointee of Thiers) submitted to the Assembly the draft of a republican constitution,[2] they buried their differences long enough to defeat the plan, and force the president's resignation.[3] They now felt that the time had come to end a régime which they had assumed from the first to be temporary, and for a short while the tide ran strongly in their favor. They elected to the presidency Marshal MacMahon, who not only was a monarchist, but, being a soldier rather than a parliamentarian and orator, did not care to take an active part in politics; besides, he was not a member

[1] Esmein, *Éléments de droit constitutionnel* (4th ed.), 515

[2] *Journal officiel*, May 20, 1873, p. 3208.

[3] Anderson, *Constitutions*, 622-627; A. Lefèvre Pontalis, "L'Assemblée nationale et M. Thiers," in *Le Correspondant*, Feb. 10, 1879; Hanotaux, *Contemporary France*, I, Chap. x; II, Chap. i; A. Thiers, *Notes et Souvenirs de 1870 à 1873* (Paris, 1903); J. Simon, *Le gouvernement de M. Thiers* (Paris, 1878); E. de Marcère *L'Assemblée nationale de 1871* (Paris, 1904).

of the Assembly. They set up a " coalition " ministry under the Orleanist Duc de Broglie, and put republican agitation, in the press and otherwise, under the ban. Finally, they worked out an ingenious compromise whereby the Bourbon Count of Chambord was to be made king under the title of Henry V, and, he having no heirs, the Orleanist Count of Paris was to be recognized as his successor. The whole project, however, failed, for the reason that the Count of Chambord refused to give up the white flag, which for centuries had been the standard of the Bourbon house, while the Orleanists held out for the tricolor.[1]

This curious turn of affairs saved the life of the republic for the time being, and also contributed much to the final settlement. In the hope that they might eventually gain sufficient strength to place their candidate on the throne without the coöperation of the Legitimists, the Orleanists joined with the Bonapartists and the republicans, November 20, 1873, in voting to fix the term of President MacMahon at seven years.[2] The Orleanists assumed that if within that period an opportunity should arise for the establishment of the Count of Paris upon the throne, the President would clear the way by retiring. The opportunity, however, never came, and the septennial period for the French presidency, thus established by monarchists in their own interest, passed later into the permanent mechanism of a republican state.[3]

The Constitution Adopted. — Meanwhile the law of September 20 gave fresh impetus to the work of constitution-making by providing that a committee of thirty should be elected at once to prepare constitutional laws for the Assembly's consideration. This committee entered upon its task with commendable zeal.[4] Due consideration was given to the *projet* presented to the Assembly by Dufaure on the eve of Thiers' resignation, although another plan, submitted in the name of the MacMahon government by the Duc de Broglie (Dufaure's successor as vice-president of the council) was made the main basis of discussion. Both members and outsiders were no less prolific of proposals than were

[1] Hanotaux, *Contemporary France*, II, Chaps. iii-v; Marquis de Castallane, "Le dernier essai de restauration monarchique de 1873," in *Nouvelle Rev.*, Nov. 1, 1895.

[2] Duguit et Monnier, *Les constitutions*, 319; Anderson, *Constitutions*, 630; Hanotaux, *op. cit.*, II, Chap. vi.

[3] There was much difference of opinion as to whether the septennate was personal or constitutional. Some held that if MacMahon should die or resign before the end of the period the entire arrangement would lapse. Others considered that in such a contingency a successor would have to be elected to fill out the term.

[4] The unpublished minutes of its proceedings are preserved in the archives of the Palais Bourbon.

Americans when the constitutional convention was sitting at Philadelphia in 1787. Progress in committee was slow; the Assembly itself held back from pressing matters to a conclusion; and only at the opening of 1875 did systematic consideration of the *projets* formulated by the committee begin. By that time the country was becoming restless under the agitation of Gambetta and other republican leaders, and even the Legitimists and Orleanists feared that the existing unsettlement would lead to a Bonapartist revival. The upshot was that the Orleanists, convinced that a monarchy of their own making was, for the present, impossible, and preferring a republic to any other alternative that had been suggested, gave their support in sufficient numbers to the program of the republicans to make it at last possible to work out for the nation a conservatively republican constitutional system. Only after earnest effort, however, and by the narrow vote of 353 to 352 on the first division, were the republicans able to carry a resolution, introduced January 30, 1875, by the deputy Wallon, making definite provision for the election, term, and reëligibility of the president of the republic.[1] In a sense, this resolution introduced no innovation, but merely ratified a preëxisting system. It did not state a principle, or even say that France should remain a republic. But in affirming certain facts about the presidential office, and especially in prescribing that the president should be reëligible, it plainly assumed that the republic was to be permanent.

Thereafter progress was rapid. The first of the constitutional measures to be brought to a definitive vote was the Law on the Organization of the Senate, which was adopted on February 24 by a vote of 435 to 234.[2] The second was the Law on the Organization of the Public Powers, which was carried on February 25 by a vote of 425 to 254.[3] The gaps which remained were to some extent filled up by a Law on the Relations of the Public Powers, based on a *projet* introduced for the government by Dufaure on May 18, and adopted July 16 by a vote of 520 to 84.[4]

[1] "The president of the republic is elected by an absolute majority of votes by the Senate and Chamber of Deputies united as a National Assembly. He is chosen for seven years and he is reëligible." This became Art. 2 of the Law on the Organization of the Public Powers.

[2] *Annales de l'Assemblée nationale*, XXXVI, 616.

[3] *Ibid.*, XXXVI, 654. The vote on Art. 2 (the Wallon amendment), separately taken on February 24, was 413 to 248.

[4] *Ibid.*, XL, 111–114. "The National Assembly, which had, not without some hesitation and perturbation, declared itself a constituent body, had at last kept the engagement it had made for itself. A constitution had been voted; but how slowly, how painfully, how incoherently." Hanotaux, *Contemporary France*, III, 283.

These three measures completed the constitution, properly considered. Before the new system could be put into operation, however, a number of important matters had to be settled, notably the manner of electing the deputies and various aspects of senatorial elections not covered in the law of February 24; and this occupied several more months.[1] The senatorial elections were finally held January 30, 1876, the elections of deputies February 20 and March 5;[2] and on March 8 the National Assembly — after more than five years of power — resigned its functions into the hands of the new parliament and passed out of existence. Unlike certain of the country's earlier fundamental laws, the constitution of 1875 was not submitted to a plebiscite; nor did it provide for any direct participation of the people in its amendment. That it met with the approval of the bulk of the nation was, however, indicated by the expressions of relief with which the inauguration of a regular, constitutional régime was greeted, and by the unexpected stability which this régime displayed under early and somewhat severe tests.[3]

Form and Character of the Constitution. — Framed under the peculiar conditions that have been described, and the handiwork of a body which as a whole felt no enthusiasm for it, the French constitution of 1875 is unlike any instrument of government with which the English-speaking world has had experience. In the first place, although a written constitution, it consists of three separate documents, and in this regard is to be likened to the Austrian constitution of 1867, which comprised a group of five

[1] A law providing in detail for the election of senators was passed on August 2 and another regulating the choice of deputies on November 30. For the original texts, see Duguit et Monnier, *Les constitutions*, 325–335, and for translations, Dodd, *Modern Constitutions*, I, 295–308.

[2] These elections are fully described in Hanotaux, *op. cit.*, III. Chaps. vi–vii.

[3] The texts of the three constitutional laws are printed in Duguit et Monnier, *Les constitutions*, 319–325, and Duvergier, *Lois*, LXXV, 42–62, 250–255. English versions will be found in Dodd, *Modern Constitutions*, I, 286–294, and Anderson, *Constitutions*, 633–639. The best account of the events of 1875 is Hanotaux, *Contemporary France*, III, Chaps. i–iii. Another good account is A. Bertrand, *Les origines de la troisième république, 1871–1876* (Paris, 1911). Three older books on the rise of the Third Republic are F. Littré, *L'établissement de la troisième république* (Paris, 1880); L. E. Benoit, *Histoire de quinze ans, 1870–1885* (Paris, 1886); and A. Callet, *Les origines de la troisième république* (Paris, 1889). On the chief protagonist of republicanism see F. T. Marzials, *Léon Gambetta* (London, 1890); P. B. Ghensi, *Gambetta; Life and Letters* (New York, 1910); J. Reinach, *La vie politique de Léon Gambetta, suivi de quelques essais sur Gambetta* (Paris, 1917); and P. Deschanel, *Gambetta* (Paris, 1919). There is an interesting interpretation in Fisher, *Republican Tradition in Europe*, Chap. xi. Two excellent works on the constitutional system as established are C. Lefebre, *Étude sur les lois constitutionnels de 1875* (Paris, 1882), and E. Pierre, *Traité de droit politique, électoral, et parlementaire* (Paris, 1893).

distinct fundamental laws, rather than to the constitutions of the United States or Canada or Australia, or France herself before 1870.[1] More important than this — for, practically, the three laws may be considered as divisions of one instrument — is the fact that the constitution covers by no means all of the ground that a written frame of government is ordinarily expected to cover. It contains no general bill of rights, nor, indeed, any specific guarantees of the rights of the citizen as against the government.[2] It does not say how the members of the Chamber of Deputies shall be elected, or how the ministers shall be appointed. Strictly, it does not say how the senators shall be elected; for an amendment of August 14, 1884, withdrew the constitutional character from those articles of the constitutional law of February 24, 1875, which covered this point. Aside from providing that the Senate may be constituted a high court of justice, it leaves the judiciary untouched. It makes no provision for annual budgets. In striking contrast with earlier French constitutions, which were long, comprehensive, logical, and symmetrical, the instrument of 1875 is brief, partial, and unsystematic, laying down only certain main lines of organization (and not all of those that are necessary) and leaving the rest to be supplied by custom or by ordinary legislation.

The constitution, furthermore, is of a very practical nature. The debates in the Assembly were singularly free from the didactic theorizing and the classical allusion so characteristic of the discussions of the Convention of 1792–95 and of the Constituent Assembly of 1848. The framers did not start with abstract principles and seek to carry them out to all of their logical consequences. Rather, the instrument was hammered out, piece by piece, on the basis of experience, and with a view to meeting the demand of an impatient country for a regularized, workable system.

It follows that the constitution is a product of compromise. It was voted by monarchists who receded in part from their own

[1] The constitutions of the First and Second Empires consisted of disjointed texts, if the *senatus-consultes* which in each case superimposed an Imperial régime upon a republican system are to be regarded as true constitutional instruments.

[2] It is to be observed, however, that many authorities agree with Professor Duguit in his contention that although the individual rights enumerated in the Declaration of Rights of 1789 are not mentioned in the constitutional laws of 1875, they are to be considered as lying at the basis of the French governmental system to-day. Any measure enacted by the national parliament in contravention of them, says Professor Duguit, would be unconstitutional. They are not mere dogmas or theories, but rather positive laws, binding not only upon the legislative chambers but upon the constituent National Assembly. *Traité de droit constitutionnel*, II, 13.

position in despair of attaining their full desires, and by republicans who were prepared to make large concessions in order to obtain their main purpose in the establishment of the republic on a constitutional basis.[1] To realize this prime object, the republicans, indeed, yielded so much that it was commonly said that the new constitution was a monarchist document, and was intended by most of its nominal supporters to pave the way for the revival of kingship. Certainly it is true that the new system presented many features, *e.g.*, the dignities and functions bestowed upon the president, which hitherto had seemed to go with limited monarchy — features, which, at all events, had never yet appeared in a republican régime. Herein lay, however, an element of strength: the constitution was not only practical rather than doctrinaire; it was linked up with tradition, and hence, if lacking in logic of content and arrangement, was based, as a French writer has put it, on " the larger logic of history."[2]

Finally, it must be observed that what has thus far been said applies only to the constitution of 1875 in the narrow sense, namely, the three fundamental laws. The actual, working constitution of France to-day is something very different. In the first place, the original laws have been somewhat altered by formal amendment. But more important is the fact that around these laws has been built up a great structure of statutory regulations, of which many differ from the fundamental laws only in that they have been adopted and can be altered in the same manner as any ordinary law — in short, they differ in legal basis, but not in general nature or significance. Such is the law of August 2, 1875, on the election of senators, that of November 30, 1875, on the election of deputies, that of June 16, 1885, substituting *scrutin de liste* for *scrutin d'arrondissement*, that of July 17, 1889, prohibiting multiple candidatures, and that of July 12, 1919, introducing proportional representation.[3]

Amendment. — The way was opened for the final adoption of the laws of 1875 by the decision to make amendment easy and to permit total, as well as partial, revisions. This was a source of much comfort to the monarchists; every group could still cherish the hope that its plan would finally triumph. The amending process is defined in the law of February 25. As is

[1] See Laboulaye's report, in *Annales de l'Assemblée nationale*, XXXVIII, 223.

[2] Esmein, *Éléments de droit constitutionnel* (4th ed.), 534.

[3] See Chap. XXIII. See R. Saleilles, "Development of the Present Constitution of France," in *Ann. Amer. Acad. Polit. and Soc. Sci.*, July, 1895. An admirable analysis of the form and character of the constitution is Hanotaux, *Contemporary France*, III, Chap. v.

true of ordinary laws, the initiative may come from the president of the republic (or the ministers acting in his name) or from members of either branch of Parliament; and proposals for revision are first considered by the two houses separately. If both houses decide, by an absolute majority of their members, that a revision is desirable, the members meet in a unicameral National Assembly, in which amendments are carried by absolute majority.[1]

This mode of amendment presents several interesting features. In the first place, the same men amend the constitution who make the ordinary laws. After the preliminary stage, however, they are differently organized for the two purposes. When convened in the Assembly, the chambers lose their individuality for the time being, and senators and deputies become members, on a common footing, of a new, distinct constituent body;[2] and whereas the work of legislation is carried on by the chambers sitting in their respective buildings in the capital, the Assembly meets in the hall occupied from 1876 to 1879 by the Chamber of Deputies in the old royal palace at Versailles.[3] In the second place, the amending process is very simple and expeditious. It is, of course, not more so than in England, where, as we have seen, the Parliament at Westminster amends the partially written, partially unwritten, constitution in precisely the same manner in which it enacts ordinary laws. But, as compared with the method in the United States, where amendments, after being proposed by Congress or by a special convention, have to be ratified by the legislatures (or by conventions) in three fourths of the states, it is notably easy and speedy. No form of ratification is required. The method was adopted with a view to avoiding delays and deadlocks, such as have frequently risen in Belgium, where amendments are considered and acted on at all stages by the parliamentary chambers sitting separately.[4] Either house, it is true, can block a proposed amendment by refusing to make the preliminary declaration that a revision is necessary — a power which was designed primarily to protect the Senate, whose members are overwhelmed numerically by the deputies in the National As-

[1] No special officers are elected for the direction of the Assembly's proceedings. The president, vice-presidents, and secretaries of the Senate serve as the "bureau." On the early doubt as to whether a majority of all members or only a majority of those voting is required see Esmein, *Éléments de droit constitutionnel* (4th ed.), 905–906. The practice is to require a majority of the entire membership of the two chambers. There being now 300 senators and 626 deputies, 464 votes in the National Assembly would be necessary for the adoption of an amendment.

[2] Duguit, *Manuel de droit constitutionnel*, (2d ed.), 457.

[3] See p. 388.

[4] See Dodd, *Modern Constitutions*, I, 146.

sembly, against amendments aimed specifically at it. But, once the initial declaration has been made, the decision rests with a single body, and therefore is likely to be quickly reached. The system was thus wisely devised to make it somewhat difficult to set the amending machinery going, but easy to obtain results after it is started.

The only restriction that has been laid upon the amending powers of the National Assembly is contained in an amendment of August 14, 1884, which forbids that the republican form of government shall be made the subject of a proposed revision.[1] Hence the chambers are practically omnipotent; even the restriction just mentioned must be regarded as a gentleman's agreement rather than as an insurmountable restraint; for the same authority that decreed it might rescind it, and any action of the National Assembly is *ipso facto* legal and enforceable. In France, therefore, no less than in England, the constitution is at the mercy of the government, for in both countries the people have tacitly surrendered to the government the exercise of constituent powers. In France, a certain formal, procedural distinction between constituent and legislative powers is maintained; and this undoubtedly acts as a restraint. But in principle the situation is the same as in England, where no procedural distinction exists; and there is not even the half-formed tradition which seems to be growing up in England that no great constitutional change shall be made until the people shall have had an opportunity to express themselves upon it at a national election.[2]

In point of fact, the amending power has been used sparingly. Great and necessary additions to, or other changes in, the governmental system have been made freely and easily, both by ordinary laws and by laws which, while not strictly "constitutional," are still somewhat more fundamental than simple statutes (the electoral laws afford illustrations), and hence are termed "organic" acts. But there have been no formal constitutional amendments except (1) that of June 21, 1879, repealing the article of the law of February 25, 1875, which prescribed that the seat of the executive power and of the two chambers should be at

[1] "The minister, Jules Ferry, who took the initiative of this measure, did not, of course, believe that a word inserted in a law could make the constitution eternal. But he wished to put an end to the attacks, then incessantly renewed, of the enemies of the Republic. The practical bearing of this proposition is easily grasped. Any revision which would have for its object the substitution of a monarchical system for the Republic would be illegal and revolutionary. The head of the state would have the right, as it would be his duty, to refuse to promulgate such a law if voted." Poincaré, *How France is Governed*, 163.

[2] Willoughby, *Government of Modern States*, 123–128.

Versailles,[1] and (2) a series of four adopted August 14, 1884, as follows: (*a*) reducing from three to two months the maximum interval between a dissolution of the Chamber of Deputies by the president of the republic and the election of the new chamber, and requiring that the latter shall meet within ten days after the election, (*b*) forbidding the republican form of government to be made the subject of a proposal for revision, and making members of families that have reigned in France ineligible to the presidency, (*c*) withdrawing its constitutional character from that part (Arts. 1–7) of the law of February 24, 1875, dealing with the election of senators, and (*d*) rescinding a paragraph of the law of July 16, 1875, which required that on the first Sunday after the opening of a parliamentary session divine aid in behalf of the chambers should be invoked in all churches and temples.[2]

[1] A statute of July 22, 1879, transferred the seat of government to Paris. Duguit et Monnier, *Les constitutions*, 336–337.

[2] Texts in Duguit et Monnier, *Les constitutions*, 336, 338, and Anderson, *Constitutions*, 639–640. For discussion see Esmein, *Éléments de droit constitutionnel* (4th ed.), 901–918, and Duguit, *Manuel de droit constitutionnel* (2d ed.), 452–465. The amendment of constitutions in general is considered in Willoughby, *Government of Modern States*, Chap. vii, and more fully, on historical lines, in C. Borgeaud, *Établissement et révision des constitutions en Amérique et en Europe* (Paris, 1893), trans. by C. D. Hazen under the title *Adoption and Amendment of Constitutions in Europe and America* (New York, 1895).

CHAPTER XXII

THE PRESIDENT AND THE MINISTERS

Form of the Executive. — The most fundamental function of government is the execution of law, and no governmental system is worthy of the name that does not make ample provision for the exercise of executive power by some constituted authority. In France, as in the United States, this function has been bestowed upon an elected president. The French presidency, as has been explained, had its origin in the unsettled period following the Prussian war, when it was widely believed that monarchy, under one dynasty or another, would eventually be reëstablished. The title was created in 1871. But the office as it exists to-day hardly antedates the election of Marshal MacMahon in 1873; and it still bears evidence of the purpose of the majority of its creators to keep the French people accustomed to visible personal supremacy, and so to make easier the future transition to a monarchical system.

It follows from what has been said that the framers of the constitution of 1875 did not squarely and disinterestedly face the question of what form of executive to establish. When the National Assembly came together at Bordeaux, Thiers' experience and capacity towered so far above the qualifications of any other member that his election as "chief of the executive power" was almost automatic; the body was so nearly unanimous upon it that a division was not called for. This act was sufficient to create a presumption in favor of a single executive, elected by an assembly representing the people at large; and this presumption, coupled with the ulterior designs of the monarchists, was adequate to carry the executive along unchanged in its fundamentals until it passed into the constitution of 1875. There was little weighing of either French precedent or of foreign experience. The constitution of the First Republic, and that of Switzerland, might have suggested a collegial, or plural, form of executive; that of the Second Republic might have influenced a decision in favor of direct popular election. But by the time when the Assembly was prepared to confess to itself that it was framing a

republican constitution which might become permanent, the executive, in the form first hastily set up, had become sufficiently intrenched to be accepted as a fixed feature of the new system. The country lost nothing thereby; its experience with the Directory of 1795–99 was not encouraging; and, notwithstanding the very fair success of the Swiss plan, political scientists regard it as generally desirable that executive powers be legally or nominally vested in a single person.[1]

The President: Election. — There are three principal ways in which the chief executive of a republic can be chosen: by direct popular vote, by the legislature, and by an electoral college specially constituted for the purpose. Mexico and other Latin-American states afford illustration of the first method, Switzerland of the second, the United States of the third. Under the First Republic, France tried a modified form of the second plan,[2] and under the Second Republic she tried direct popular election. Her experience with the latter was wholly unsatisfactory; Louis Napoleon readily used it, first to secure his election as president, and later to obtain an indorsement of the *coup d'état* by which he made himself emperor. Accordingly, under the Third Republic the nation returned to the plan of election by the legislature, the decision being aided, of course, by the fact that when the constitutional laws were finally framed the National Assembly had already elected two presidents. The constitutional law of February 25, 1875, provides that the president shall be chosen, for a term of seven years, "by an absolute majority of votes of the Senate and Chamber of Deputies united in National Assembly";[3] and the law of July 16, 1875, supplies the necessary procedural details.

One month, at least, before the expiration of his term the president is required to convoke the members of the two chambers in a unicameral National Assembly (which sits at Versailles, as for amending the constitution) to choose his successor. In default of such a summons, the meeting takes place on call of the president of the Senate two weeks before the expiration; and in the event of the death or resignation of the president, the Assembly is required to convene immediately without summons.[4] There is no vice-president, nor any law of succession, so that

[1] Esmein, *Éléments de droit constitutionnel* (4th ed.), 536–539.

[2] See p. 367.

[3] Art. 2. Dodd, *Modern Constitutions*, I, 286.

[4] The president presents his resignation in letters addressed to the presidents of the parliamentary chambers. On the resignation of President Grévy in 1887 see Bodley, *France*, I, 293–296.

whenever the presidential office falls vacant there must be an election; and, at whatever time and under whatever circumstance begun, the term of the newly elected president is the full seven years. As upon the occasion of the assassination of M. Sadi-Carnot in 1894, a vacancy may arise unexpectedly, entailing a hurried election. Even under normal conditions, however, a presidential election in France involves no period of campaigning such as we are familiar with in the United States. The candidates, or at all events their friends, are likely to try to line up the parliamentary members in their behalf; they may even make speeches and in other ways appeal to popular sentiment. But the situation is very different from that which would exist if the choice lay with the people directly.

So far as the formalities go, an election is likely to be carried through all stages within the space of forty-eight hours. As described by a recent president, M. Poincaré, the procedure is as follows: "When the Assembly is convoked for a presidential election the members vote without discussion.[1] The urn is then placed in the tribune (the platform from which speakers would address the body if debate took place), and as an usher with a silver chain calls their names in a sonorous voice the members of the Assembly pass in a file in order to deposit their ballot-papers. . . . The procession of voters lasts a long time; there are nearly nine hundred votes to be cast.[2] When the vote is completed the scrutators, drawn by lot from among the members of the Assembly, count the votes in an adjoining hall. If no candidate has obtained an absolute majority of votes, the president[3] announces a second ballot, and so on, if needful, until there is some result. The candidate elected is proclaimed by the president of the Assembly. There are applause, and cries of *Vive la République!* and the Assembly dissolves. The new president, accompanied by the ministers, reënters Paris and installs himself in the Palais de l'Élysée."[4] The inauguration takes place, of course, on the day on which the former president's term expires. The incoming executive is escorted to the Élysée by the prime minister and a regiment of cuirassiers, the retiring president makes

[1] This is because the National Assembly is sitting as an electoral college, and the business of an electoral college is to vote, not to debate.

[2] The number is now (in 1920) 926.

[3] The president of the Senate occupies the chair.

[4] Poincaré, *How France is Governed*, 168–169. Much information on presidential elections is presented in Bodley, *France*, I, 271–332, and the subject is discussed systematically in Esmein, *Éléments de droit constitutionnel* (4th ed.), 544–558. See also A. Tridon, "France's Way of Choosing a President," in *Amer. Rev. of Revs.*, Dec., 1912.

a formal speech and his successor a reply, and afterwards the two go together to the Hôtel de Ville, where they are received by representatives of the municipality and of the department of the Seine. The people line the streets and cheer; but the formal ceremony is attended only by the ministers and by committees (including the presidents) of the two chambers.

The President: Term, Qualifications, and Immunities. — The president's term is seven years. Under the Second Republic the term was four years, and the *project* submitted to the National Assembly by Dufaure in 1873 provided for a term of five years. But the longer period was finally adopted, mainly because, as has been explained, the majority conceived of the septennate as a bridge leading across the republican morass which separated the fallen Empire from a future Bourbon or Orleanist monarchy. It is of interest to recall that a seven-year term for the president was provided for in the first draft of the constitution of the United States, and that the period was reduced to four years only after election by Congress was abandoned in favor of choice by electors specially chosen for the purpose.[1]

In the United States, presidential elections take place at fixed intervals, and if the office falls vacant during the quadrennial period the vice-president succeeds, or in lieu of the vice-president, heads of departments in order fixed by law. In France, on the contrary, every president is directly elected to the office, and is entitled to a full term from the date of his accession. The constitution of the Second Republic, provided, indeed, for a vice-president, who was appointed by the National Assembly from three candidates presented by the president. But the vice-president was merely to act for the president in case of the latter's disability, and to discharge the duties of the office temporarily when it fell vacant by death or resignation. He could not definitely succeed to the position unless he was elected thereto by the Assembly;[2] and under the Third Republic there is no provision for a vice-president at all. In the American system the vice-presidency is a practical necessity, although the great disadvantage is entailed that it may be the means of bringing into the chief executive's chair a man who has not really been chosen with a view to his qualifications for it. Under the French system the office is not needed. In case of the president's resignation or death, the council of ministers acts as head of the state until

[1] M. Farrand [ed.], *The Records of the Federal Convention* (New Haven, 1911), III, 216–217.

[2] Art. 70. Anderson, *Constitutions*, 531–532.

a successor is chosen. There is no clear provision for discharging the duties of the office in case the president is merely incapacitated. But there can be no doubt that the ministerial council would act in this contingency also. As will appear, this body is at all times the actual, working executive, and its temporary assumption of the nominal headship of the state would produce no serious disturbance of the balance.

The constitution of the United States stipulates certain qualifications for the president, and the first two republican constitutions of France had definite provisions of this character. The constitution of the Third Republic is mute on the subject, except that an amendment of 1884 debars members of families that have reigned in France. The framers of this instrument felt that it would be impossible for any one to be elected by the National Assembly who was not a male French citizen, twenty-one years of age or above, and in possession of full civil and political rights; and, having little faith in the efficacy of artificial restrictions and regulations, they preferred to let the matter go unmentioned. In point of fact, the Assembly can be counted on to elect a man who has long been a member, and has perhaps served as president of one or the other of the two houses of Parliament, who has had experience in committee work and, as a rule, as a cabinet officer, and who, above all, is not of too aggressive or domineering temperament.

On one point, however, the makers of the French constitution were more specific than the framers of the American instrument, namely, the president's reëligibility. The president is reëligible, immediately and indefinitely. The clause of the constitution of 1848 which made the president reëligible only after an interval of four years had much to do with producing the *coup d'état* of 1852, and the principle has never been revived. The relatively long term, however, sets up a certain presumption against reëlection. Only one president, M. Grévy, has been elected a second time; and circumstances compelled him to resign (December 1, 1887) before the close of the second year of his second term.[1]

A subject that caused the framers of the constitution some trouble was the president's responsibility. Up to 1875, it was

[1] Bodley, *France*, 1, 291–298. Counting Thiers, the republic has thus far had ten presidents: Adolphe Thiers, 1871–73; Marshal MacMahon, 1873–79; Jules Grévy, 1879–87; F. Sadi-Carnot, 1887–94; Casimir-Perier, June, 1894, to January, 1895; Félix Faure, 1895–99; Émile Loubet, 1899–1906; Armand Fallières, 1906–13; Raymond Poincaré, 1913–20; and Paul Deschanel, 1920 to the present day. For the electoral vote in each case see H. Leyret, *Le président de la république* (Paris, 1913), 233–243.

commonly assumed that in a republic having a cabinet form of government the president, as well as the ministers, must be responsible to the legislature. The constitution of 1848 declared the president responsible, along with the ministers and all other persons intrusted with public powers;[1] and de Tocqueville, de Broglie, and other publicists steadily urged that presidential responsibility is of the very essence of republicanism. Experience in the years 1871–75 showed, however, the difficulty — indeed, the impossibility — of attaching general and political responsibility to a president with a fixed term, even though he was elected by the legislature. Furthermore, it was difficult to maintain presidential responsibility and ministerial responsibility side by side; in the nature of things, one tended to exclude the other. The consequence was, therefore, that political responsibility for the president was given up. The essential object, which was, of course, to bring the acts and policies of the executive under the ultimate control of the legislature, was attained, rather, by stipulating in the constitution, first, that every act of the president should be countersigned by a minister, and second, that the ministers should be collectively responsible to the chambers for the general policy of the government, and individually for their personal acts.[2] This relieves the president of all political responsibility to the chambers.

There was no thought, however, of putting the titulary head of the state in the position of absolute immunity enjoyed by monarchs, even by the king of England. Hence the constitution further prescribes that the president shall be responsible in case of high treason, and that he may be impeached by the Chamber of Deputies and tried by the Senate. In other words, his responsibility is not political, but penal. His person and his dignity are protected by statute against insult, and, like the president of the United States, he is exempt during his term of office from the processes of the ordinary courts. But, also like his American compeer, he may be brought to trial before the Senate on articles of impeachment presented by the lower legislative chamber. The president of the United States can be impeached for "treason, bribery, or other high crimes and misdemeanors";[3] the French president can be impeached for high treason only. On the other hand, whereas the penalty that can be imposed upon the American president by the Senate

[1] Art. 68. Anderson, *Constitutions*, 531.
[2] Law of February 25, 1875, Arts. 3, 6. Dodd, *Modern Constitutions*, I, 287.
[3] Federal Constitution, Art. II, Sec. 4.

is confined to removal from office and disqualification to hold office, the French constitution fixes no limit to the penalty that can be inflicted upon a president convicted of treason. No French president has been impeached; and inasmuch as the penal laws nowhere define "high treason," the actual intent and operation of the provisions of the constitution on this point are the subject of considerable differences of opinion among French writers.[1]

Powers of the President. — On taking up the powers and functions of the president, one is immediately struck by the widely differing estimates which writers have placed upon them. On the one hand, we find the duc de Broglie characterizing the president as "a chief invested with all the attributes of royalty: initiative, veto, and execution of the laws; direction of the administration in all of its branches; appointment of all employees of the government; command of the forces on land and sea — a royal chief, without the royal name and the royal permanence."[2] On the other hand, we read in Sir Henry Maine: "There is no living functionary who occupies a more pitiable position than a French president. The old kings of France reigned and governed. The constitutional king, according to M. Thiers, reigns, but does not govern. The president of the United States governs, but he does not reign. It has been reserved for the president of the French republic neither to reign nor yet to govern."[3] The discrepancy is quite as great as that which appears in various classic statements of the powers of the king of England; and the reason is the same. In both cases everything depends on whether one is thinking of the powers which in law belong to the titulary head of the state or of those which that dignitary independently and personally exercises. On the one side of the Channel as on the other, the powers that nominally belong to the titulary head are exercised mainly by ministers over whom he has little or no effective control.

Waiving for the time being the question of how the French president's powers are actually exercised, the powers themselves can be stated in brief and simple terms. In the first place, the constitution gives the president full executive authority. He promulgates the laws and controls the administrative machinery

[1] Esmein, *Éléments de droit constitutionnel* (4th ed.), 657–663; Leyret, *Le président de la république*, 31–44. On the president's immunity from control by the courts in the United States see W. B. Munro, *Government of the United States* (New York, 1919), 124–125. On impeachment in the United States see W. W. Willoughby, *Constitutional Law in the United States* (New York, 1910), II, 1121–1124.

[2] *Vues sur le gouvernement de la France*, 227.

[3] *Popular Government*, 250.

through which they are enforced. By virtue of the *pouvoir réglementaire*, he issues *décrets*, or ordinances, which, although not laws, supplement and apply the laws on a wide variety of subjects. These *décrets* are frequently, in effect, administrative rules, such as are issued by the president of the United States or under his name and authority. They bear a close resemblance, too, to English orders in council.[1] The president appoints to all civil and military offices in the central government and to many in the local governments; on account of the centralized character of the political system, his appointments are relatively more numerous than those of the president of the United States, and they do not require confirmation by the Senate, or by any other body. He may even, by decree, create new offices, and, except in a few cases, his power of removal is unlimited. Parliament, however, may fix the qualifications to be required of appointees to particular positions or classes of positions, and may even vest the appointing power for certain purposes in authorities other than the president.[2] The president sends and receives all ministers, ambassadors, envoys, and consuls; and he negotiates and approves treaties. Treaties of peace and commerce, treaties which involve the finances of the state, and those which affect the personal status and the rights of property of French persons abroad require ratification by the two chambers (not simply the Senate, as in the United States); and, with or without a treaty, no cession, exchange, or addition of territory can be made without parliamentary sanction. The exceptions are so inclusive that not many foreign agreements can be made effective by action of the executive alone. However, extradition treaties, military conventions, treaties of alliance, and political treaties of all kinds fall in this category so long as they do not require appropriations from the national treasury.[3] The president,

[1] See p. 71. L. Duguit, *Law in the Modern State* (New York, 1919), 70–83; Esmein, *Éléments de droit constitutionnel* (4th ed.), 574–583; H. Berthélemy, "Le pouvoir réglementaire du président," in *Rev. Polit. et Parl.*, Jan.–Feb., 1898; L. Rolland, "Le pouvoir réglementaire du président de la république en temps de guerre," in *Rev. Droit Pub. et Sci. Polit.*, Oct.–Dec., 1918.

[2] Esmein, *Éléments de droit constitutionnel* (4th ed.), 584–594. Compare the power of the American Congress to vest the appointment of inferior officers in "the president alone, in the courts of law, or in the heads of departments." U. S. Constitution, Art. II, Sec. 2.

[3] Esmein, *op. cit.*, 631; Leyret, *Le président de la république*, Chap. vi; D. P. Myers, "Legislatures and Foreign Relations," in *Amer. Polit. Sci. Rev.*, Nov., 1917; "Treatment of International Questions by Parliaments in European Countries, the United States, and Japan," in *British Parl. Papers*, Misc., No. 5 (1912); P. Barisien, *Le parlement et les traités* (Paris, 1913). The chambers accept or reject a treaty *in toto*, and never seek to revise its terms.

furthermore, is commander-in-chief of the armed forces of the nation, military and naval. He cannot declare war without the consent of the chambers; but through his management of foreign affairs he may at any time create a situation making war inevitable, very much as may the president of the United States. Finally, the president has the powers of pardon and reprieve, although amnesty can be granted only by parliamentary act.[1]

In relation to legislation, the president's powers are likewise impressive. He convokes the two houses of Parliament in both regular and extraordinary sessions (subject to the constitutional requirement that they shall assemble each year in January whether convoked by the president or not) and adjourns them for any period not exceeding one month; and, with the consent of the Senate, he can dissolve the Chamber of Deputies before the expiration of its term, thereby bringing on a national election.[2] He cannot veto measures in the same fashion as the president of the United States, but he can refuse to promulgate them until they have been reconsidered by the chambers. If upon reconsideration a bill is again passed, even by bare majorities, the president must proclaim it and enforce it. He can communicate with the chambers by messages, which are read from the tribune by a minister; and, on the analogy of the constitution of 1848, and in pursuance of practice during the formative period 1871–75, the constitution authorizes him to initiate laws concurrently with the members of the two houses. Formally, the president of the United States has no such power; but through channels hardly less direct than those through which the French president proposes legislation, he brings measures before Congress and, indeed, makes his initiative in legislation a chief means of control over the policies and achievements of his administration.[3]

The President and the Ministers. — Two main reasons appear for the decision to confer upon the president the wide range of power thus outlined. The first was the desire of the mon-

[1] Esmein, *Éléments de droit constitutionnel* (4th ed.), 594–603.

[2] See p. 429.

[3] The best brief accounts of the French presidency are Esmein, *Éléments de droit constitutionnel* (4th ed.), 536–663; Duguit, *Manuel de droit constitutionnel* (2d ed.), 401–435; and G. Jèze, "La présidence de la république," in *Rev. du Droit Pub.*, XXX, 113–127. A valuable treatise is Leyret, *Le président de la république*, and interesting comparisons are drawn in J. Nadal, *Attributions du président de la république en France et aux États-Unis* (Toulouse, 1909). The best account in English is Bodley, *France*, II, 271–332. Brief popular sketches include M. Smith, "The French Presidency and the American," in *Amer. Rev. of Revs.*, Feb., 1906, and J. W. Garner, "The Presidency of the French Republic," in *N. Amer. Rev.*, Mar., 1913. The powers and duties of the American president may be compared by use of Willoughby, *Constitutional Law in the United States*, II, 1150–1173.

archists to prevent a disintegration of authority which would make the revival of kingship more difficult. Coupled with this was the disposition of the republicans to accept large prerogatives for the chief of the state rather than run the risk of losing the republic altogether; although it is to be observed that most of the powers given the president in 1875 had already figured in the constitution of 1848, which certainly was not tinged with monarchism. The second and more important reason was the purpose of the framers of the constitution so to perpetuate and amplify the parliamentary system which had grown up since the original proclamation of the republic that, whether under a republic or a monarchy, the actual exercise of the executive powers would fall, in the main, to a group of ministers responsible to, and controlled by, Parliament. The evidence of this intention is found not only in contemporary assertions of Dufaure, Laboulaye, and other statesmen, but in the constitutional laws themselves. Two articles of the law of February 25, 1875, cover the point specifically. One of them stipulates that "every act of the president of the republic shall be countersigned by a minister." The other provides that "the ministers shall be collectively responsible to the chambers for the general policy of the government, and individually for their personal acts."[1] Under the operation of these principles the ministry becomes, as in England, the real executive; and, as will appear more fully, it also emulates the example of the English cabinet group in seeking to lead and control in legislation. Aside from various formalities, largely of a social nature, the president performs no functions and exercises no powers independently. Instead, his official acts are limited to those for which the ministers are prepared to bear responsibility before Parliament and the nation; and in practice this means, precisely as it means in England, that it is the ministry itself, and not the formal head of the state, that makes decisions, issues orders, and formulates policies. We say that the president appoints to and removes from office; actually, it is, with few exceptions, the ministers, collectively or singly, who do this; the president has no personal patronage except a very small amount connected with his own household. Similarly, it is the ministers who enforce the laws, conclude treaties, manage the army and navy, introduce "government" bills in Parliament, and promulgate ordinances.[2]

[1] Arts. 3 and 6. Dodd, *Modern Constitutions*, I, 287.

[2] On the relation of the president and the ministers see especially Leyret, *Le président de la république*, ch. 10, and Dupriez, *Les ministres*, II, 358–372.

The French executive's position is, therefore, quite unlike that of the president of the United States. On paper, it is true, the powers attributed to the French president considerably exceed those bestowed on the American president. But, whereas the latter officer personally controls the entire work of one great branch of the government and has direct relations of the highest importance with the other two branches, the former looks on from a more or less isolated position while the ministers, over whom he has no effective control, carry on or direct the work of government in all of its branches. The analogy that at once suggests itself is the position occupied by the sovereign in England. But even here the parallel is not close. The French president lives in a palace and bears himself with something of the grand manner of royalty.[1] But, after all, he is only an elected official, serving for a term of years, and will presumably fall back again into the ranks of ordinary citizens. There is no halo around his head, and the far-reaching moral influence which the English monarch enjoys because of his station, his accumulation of experience, and his aloofness from party strife attaches to him in only a slight degree. On the other hand, he has closer personal contact with the officers and affairs of state. He sits with and presides over the ministry at its frequent meetings for the consideration of executive business, although not at sessions at which questions of political policy, including party affairs, are taken up.[2] He can give audience independently to foreign ministers and ambassadors, whereas the English king can receive diplomats only in the presence of a minister. The influence which he actually wields depends largely, of course, upon his own capacity, interests, and activity. M. Fallières was an amiable gentleman who was content to leave the business of state to others; he contributed little to the policies and achievements of his time. M. Poincaré, a scholar and man of affairs, played a much more active rôle, and supplied impressive leadership of the nation in its supreme hour of trial.[3]

[1] He receives from the state the sum of 1,200,000 francs a year, half as salary, half to cover traveling expenses and the outlays incumbent upon him as the official representative of the country. Two residences also are put at his disposal — the Palais de l'Élysée (the splendid structure on the Champs-Élysées in which Napoleon signed his abdication after Waterloo) and the fine old country place known as the Château de Rambouillet, on the road from Paris to Chartres.

[2] See p. 400.

[3] A. Cohn, "Why M. Fallières is an Ideal French President," in *Amer. Rev. of Revs.*, July, 1908; L. Jerrold, "President Poincaré," in *Contemp. Rev.*, Feb., 1913. On the relations of the president and the ministers see Dupriez, *Les ministres*, II, 358–372.

Composition of the Ministry. —The republican constitutions of 1795 and 1848 prescribed that the number and functions of the ministries should be determined by the legislature, and the instrument of 1795 went so far as to fix the maximum number at eight and the minimum at six.[1] The constitution of the Third Republic, on the other hand, is mute on the subject, and the rule that prevails is simply a deduction from the general character of the governmental system. This rule is that ministries are created by executive decree, ratified by Parliament only in so far as grants of supplies are entailed. The authority can be regarded as proceeding from the general plenitude of executive power vested in the president; or it can be derived more specifically from the president's power to appoint to all civil offices.[2] In this matter, as in others, the decision rests with the ministers rather than with the president personally; so that, practically, every ministry can increase or reduce the number of portfolios and alter the distribution of functions at will, except in so far as it must look to Parliament for the necessary funds. There is, however, nothing in the constitution to restrain Parliament from taking the initiative in establishing a new ministry, and in point of fact the ministry of colonies was created in this way in 1894.

Beginning with nine in 1875, the number of ministries slowly increased until at the outbreak of the Great War there were twelve, as follows: (1) interior; (2) finance; (3) war; (4) justice; (5) marine; (6) colonies; (7) public instruction and the fine arts; (8) foreign affairs; (9) commerce; (10) agriculture; (11) public works and posts, telegraphs, and telephones; and (12) labor.[3] These ministries are essentially coördinate, as are the ten executive departments in the federal government of the United States; hence they present an aspect of symmetry which is altogether lacking in the executive organization of Great Britain. Furthermore, they include all of the regular administrative services, which is not true of the American departments.

The constitution does not specifically say how ministers shall be appointed, but the right of the president to name them is easily derived from his general power of appointment. The first step in making up a new ministry is the selection of the " presi-

[1] Art. 150. Anderson, *Constitutions*, 231.

[2] For this form of the argument see Esmein, *Éléments de droit constitutionnel* (4th ed.), 669.

[3] The war led to the creation of two new ministries — munitions and blockade — which are presumably temporary.

dent of the council," or premier;[1] and the choice is indicated in a presidential decree countersigned, curiously enough, by the retiring premier. By custom — although there is no constitutional stipulation on the matter — the president observes the requirements of the parliamentary system; which means that it theoretically falls to him merely to call in the recognized leader of the majority in the lower chamber and ask him to make up a ministry. In England, as we have seen, this action as performed by the sovereign is usually a mere formality. In France the case is otherwise, for the reason that there, as will be explained, parties are so numerous that no one of them ever has a parliamentary majority alone. It often therefore becomes a matter of difficulty to find a man who can succeed in bringing together a ministry that will command majority support in the popular chamber. Sometimes the post is tendered to half a dozen men before the right one is found. Under even the most favorable circumstances, there is likely to be much uncertainty as to who will be appointed, and whether, after a man is appointed, he will prove equal to the demands of the occasion. This means that the president has far more discretion and actual power in the selection of a premier than does the sovereign in England. By custom, he looks for information and advice to the presidents of the Senate and Chamber of Deputies and to the chiefs of the recognized party groups; but the task of finding the proper man is one which he cannot delegate or evade.[2]

After the new premier is finally found, he selects the remaining ministers and assigns them to their posts, first taking for himself whatever portfolio he desires.[3] This, as has been intimated, is no simple matter. "There is no majority in the English and American sense with its recognized leaders to whom he may turn. He is under the necessity, therefore, of creating a majority through a judicious distribution of portfolios among a certain number of groups so that each member will bring to the support of the cabinet a body of adherents. . . . During the exciting days of a ministerial crisis, the Parisian journals give detailed accounts of the hurried visits of the newly appointed premier to the houses of prominent politicians, of his interviews, pourparlers, overtures, solicitations, and possible combinations,

[1] Originally, the minister who formed and gave his name to the cabinet was known as the "vice-president of the council"; but in 1876 his title was changed to president.

[2] Dupriez, *Les ministres*, II, 337–341.

[3] All, however, are formally appointed by the titulary chief executive, as in England. The president rarely rejects a nominee.

and each day there is a summary of his successes and failures. Sometimes his *démarches* are prolonged through a period of several weeks before the cabinet is finally completed; not infrequently at the last moment, after the list has been sent to the *Journal Officiel* for publication, the combination is upset by withdrawals."[1] With rarely an exception nowadays, the ministers are members of the Senate or of the Chamber of Deputies, principally the latter.[2] Whether members or not, they have a right to attend all sessions of both chambers and to take a privileged part in debate. They receive annual salaries of sixty thousand francs and reside, as a rule, in the official mansions maintained for the heads of the departments which they control.

Ministerial Organization. — In our study of the English government we saw that whereas most of the ministers are charged, either as heads of departments or as parliamentary undersecretaries, simply with executive and administrative work pertaining to their respective departments or offices, a somewhat variable number of the most important ones form an inner circle known as the cabinet, whose members not only individually supervise such departments as are intrusted to them but collectively formulate general policies, lead in legislation, and guide the fortunes of their party. Arrangements in France are on different lines. In the first place, so far as personnel goes, there is no distinction between the *conseil des ministres* and the *conseil de cabinet*, save that the president appears in the one and not in the other. In the second place, the confused state of political parties and the coalition character of every ministry make it impossible for the ministerial group to fulfill the function of party leadership in any such fashion as does the English cabinet.

Every minister has charge of a department, to whose affairs he gives his individual attention. Collectively, the ministers comprise, as has been indicated (1) a *conseil des ministres*, which makes decisions on all matters pertaining to the exercise of the executive powers vested in the president, maintains a general supervision of the execution of the laws, to the end that there may be efficiency and unity in the affairs of state, and in the event of the president's resignation, death, or incapacitation, acts as head of the state until a successor is elected, and (2) a *conseil de cabinet*, which, like the English cabinet, deliberates on questions

[1] J. W. Garner, "Cabinet Government in France," in *Amer. Polit. Sci. Rev.*, Aug., 1914, pp. 366–367.

[2] The earlier practice of appointing non-members to the portfolios of war and marine has been abandoned.

of general policy and brings the government into close working relations with the chambers.[1] The council of ministers is executive — the president's other self — and is expressly recognized by law; the cabinet is political and is not so recognized. The council of ministers meets, as a rule, twice a week, and the president not only attends but presides; valid decisions on most executive and administrative matters can be reached only in his presence.[2] The cabinet commonly meets once a week, the president does not attend, and the prime minister presides. Aside from the president, however, the two bodies are identical in personnel. Neither keeps minutes of its proceedings.[3]

The distribution of functions among the several ministries and the form of organization of each ministerial department are determined by executive regulations — practically, therefore, by the ministry itself. The general field occupied by each department is divided into certain "services," which are liberally manned with directors, sub-directors, inspectors, controllers, and officers of other kinds and grades. There is a tendency to over-multiplication of officials, and it is on this account, as well as because of the highly centralized character of the governmental system, that the body of public functionaries in the decade preceding the Great War reached the remarkable total of almost a million, or an average of one functionary for every forty persons in the republic.[4]

We have seen that the principal departments in England contain several "under-secretaries of state," some being of ministerial rank and having seats in Parliament, others forming the highest grade of the permanent civil service and therefore belonging neither to the ministry nor to Parliament. Under-secretaries of state were first appointed in France in 1816, and for a time they had only such subordinate administrative functions as were delegated to them by their ministerial superiors. Under the Orleanist monarchy they began to act as the representatives of their superiors on the floors of the chambers, and therefore took on a political character similar to that of the parliamentary under-secretaries in England. In this form they were

[1] On the participation of the ministers in legislation see Dupriez, *Les ministres*, II, 309–415.

[2] Esmein, *Éléments de droit constitutionnel* (4th ed.), 676–680.

[3] Duguit, *Manuel de droit constitutionnel*, 436–438; Dupriez, *Les ministres*, II, 345–357.

[4] For an account of the ministries as formerly organized see Dupriez, *Les ministres*, II, 509–523. A more recent account is H. Noell, *L'administration centrale; les ministères, leur organisation, leur rôle* (Paris, 1911). See also P. Ma, "L'Organisation du ministère des colonies," in *Quest. Dipl. et Colon.*, Sept. 1, 1910.

revived in the period 1871–75; and while the constitutional laws do not mention them, the organic act of November 30, 1875, on the election of deputies made indirect provision for them by stipulating that a deputy could serve as an under-secretary without the formality of reëlection. Strong differences of opinion upon the rôle which the under-secretaries should play, and especially upon their responsibility to the chambers, caused them to be dropped out of the system altogether for a time. The fact that a French minister can appear and speak in both houses of Parliament seemed to many people to make officers of the nature of the English parliamentary under-secretaries unnecessary. An under-secretariat was established, however, in the ministry of education and fine arts in 1905, and in 1911 a similar addition was made to the departments of justice, interior, and public works. During the Great War the number was further increased, at all events temporarily; after the reconstruction of the Viviani ministry in August, 1914, there were eight under-secretaries, of whom four were attached to the ministry of war. The legal and political status of the under-secretaries is a matter on which French opinion differs. The prevailing view is that they are not to be regarded as members of the ministry, notwithstanding the fact that since 1906 they have been expected to attend the meetings of the council of ministers. Apparently they have only a consultative voice in the deliberations. Their relation with the chambers is even more doubtful. Not being ministers, they are not strictly responsible. None the less, there is a tendency to make them so, in so far as any effective way of doing it can be found. They now resign in a body when a ministry retires, and an individual under-secretary has been known to resign because of an adverse vote in the lower house.[1]

Ministerial Responsibility. — The fundamental feature of cabinet government is the responsibility of the ministers to the legislature; and the French constitution provides for such responsibility in a clause already quoted: "The ministers shall be collectively responsible to the chambers for the general policy of the government, and individually for their personal acts."[2] Two or three aspects of this matter are deserving of comment. The first is that the ministers are responsible to both houses of Parliament, and not simply to the lower house as in Belgium,

[1] Esmein, *Éléments de droit constitutionnel* (4th ed.), 670–676; Duguit, *Manuel de droit constitutionnel* (2d ed.), 440–442; J. Berthélemy, "Les sous-secrétaires d'état," in *Rev. du Droit Public*, Apr.–June, 1911.

[2] Law of February 25, 1875, Art. 6. Dodd, *Modern Constitutions*, I, 287.

Italy, England, Canada, and most cabinet-governed countries. It is true that a few eminent French authorities hold that the ministers are really responsible only to the Chamber of Deputies. But the argument is based on the analogy of English and Belgian practice and of French practice in the period 1814–48, and it ignores not only the plain language of the constitution but the reasonably clear intention of the authors of that instrument to make the ministry responsible to Parliament as a whole, as being an elective democratic assembly in both of its branches. Constitutionally, the French Senate can address inquiries and interpellations[1] to the ministers, appoint commissions of inquiry, and pass votes of censure or "no confidence" precisely as does the Chamber of Deputies, and with the same effect. Practically, much difficulty would arise if the upper chamber exercised these powers as freely as the lower, and it rarely happens that a minister resigns or a ministry falls because of senatorial criticism.[2] A French ministry must have more regard for opinion in the Senate than an English ministry will ordinarily have for the views of the House of Lords. Nevertheless, direct and continuous responsibility lies hardly less clearly to the lower chamber than it does on the other side of the Channel.[3]

A second fact is that responsibility is of three kinds — political, penal, and civil; although the distinction was not clearly drawn until 1875. Political responsibility consists simply in the moral obligation to surrender office when the support of a parliamentary majority has been lost. Penal responsibility is the legal liability of a minister who, in the exercise of his functions, has performed an act defined and prohibited by the Penal Code or by a special penal law. Civil responsibility is his liability for an act by which the state is made to suffer, as, for example, an unauthorized disbursement of public money. Political responsibility is ordinarily collective. That is, the ministry stands or falls as a body; although an individual minister may be allowed to take the blame for a policy or an act that fails to win approval, and to retire

[1] See p. 444.

[2] A ministry was, however, practically forced to retire in 1896 because of senatorial opposition to an appropriation which it desired; and as recently as 1913 certain ministers resigned because of the Senate's defeat of a government bill for electoral reform.

[3] For a full discussion of this subject, together with an account of the notable controversy to which it gave rise in 1896, see Esmein, *Éléments de droit constitutionnel* (4th ed.), 688–709. Esmein was one of those who held that the ministers are responsible only to the lower house. For the contrary view see Duguit, *Manuel de droit constitutionnel* (2d ed.), 448. The relations of the ministers with the chambers are fully treated in Dupriez, *Les ministres*, II, 395–461.

separately. Penal responsibility and civil responsibility are individual, for ministers cannot justly be held liable for non-political acts in which they have not participated, and of which they are perhaps entirely ignorant. The constitutional basis of penal responsibility is the stipulation of the law of July 16, 1875, that " the ministers may be impeached by the Chamber of Deputies for crimes committed in the performance of their duties; in this case they shall be tried by the Senate."[1] There has always been difference of opinion upon the kinds of offenses for which ministers are impeachable, and some authorities have held that misuse of power — bad management of a war, for example — is to be regarded as included. The usual interpretation, however, is that a clear infraction of the penal law must be proved. The Senate may impose any penalty short of death. Civil responsibility is in an inchoate state. Practically all writers agree that it exists. But neither the constitutional laws nor the statutes say anything about it, and neither the Senate nor any court is given jurisdiction of cases involving it.[2]

The Civil Service. — On account of its unitary and highly centralized form of government, France intrusts the execution of national laws and the administration of national business in an exceptional degree to the officers of local government areas, notably the prefects and prefectural councils in the departments, the sub-prefects in the *arrondissements*, and the mayors and adjoints in the communes. The system of local government and the connections between central and local administration will be described in a later chapter.[3] It is necessary, however, to say a word at this point about the general status of the " functionaries," especially the great body of employees attached directly to one or another of the executive departments, *e.g.*, factory inspectors, telegraph operators, state railway employees, lighthouse keepers, customs collectors, immigration inspectors, and other lesser servants of the state.

The first fact to be observed about these employees is that practically all appointments are made without examination or other formal test of fitness, and that there is no guarantee of tenure. France has no general civil service law, such as that which aims to maintain on a merit basis practically the whole of the service in Great Britain and more than half of the federal

[1] Art. 12. Dodd, *Modern Constitutions*, I, 293.

[2] Berthélemy, *Traité élémentaire de droit administratif* (4th ed.), 70–75; Esmein, *Éléments de droit constitutionnel* (4th ed.), 709–724.

[3] Chap. XXVI.

service in the United States. On the contrary, in so far as there are regulations covering the classification of employees, the conditions of appointment and promotion, and the protection of employees from favoritism and arbitrariness on the part of the government, such regulations are made independently by each department, and are subject to any amount of change whenever a new minister takes charge. An incoming minister may, of course, if he chooses, continue in operation the decrees of his predecessor. But he is very likely to introduce changes representing his own ideas on the subject, and there have been instances in which a new minister suspended a decree in order to find places for his friends, and subsequently reissued the decree without the transposition of a comma.

It is hardly necessary to say that under these conditions there is no uniformity of policy and no security of tenure. The status of functionaries in one department at a given time may be totally different from that of similarly employed functionaries in other departments; and the policy in a single department may change over night. Speaking generally, the spoils system has held sway for more than forty years — to be more precise, since the Reactionaries, at the height of the contest of President MacMahon and the Republicans in 1877, made substantially a clean sweep of the offices during their brief tenure of power.[1] When the Republicans regained control on this occasion they carried out what was euphoniously called an *épuration*, *i.e.*, a purification of the administration from the enemies of the republic. The later multiplicity of parties prevented, and still prevents, the spoils system from operating smoothly, and almost automatically, as it operated at one time in the United States. But the principle fully established itself and has never been overthrown; successive ministries and individual heads of departments still act upon it in so far as they desire.

The results are such as might be expected. The number of state employees is astonishingly large, partly because of the pressure for patronage by the ministers and other members of Parliament, partly because of the clamor of the public for offices and honors. The outlay on the public services is, in the aggregate, burdensome, although the scale of salaries is exceedingly low. The average pay for the entire body of state employees hardly exceeds five hundred dollars a year, and many thousands receive less than half of that amount. Poor pay and insecure tenure tend to keep capable persons out of the service, and the persons

[1] See p. 445.

who remain in the service are perpetually dissatisfied and prone to organize themselves in syndicates and to engage in, or at least to threaten, strikes. Long before the Great War, the amelioration of the condition of the functionaries became an important public issue. The Clemenceau government in 1906 and the Briand government in 1910 promised relief, and the question entered prominently into the parliamentary elections of the last-mentioned year. No headway toward a solution, however, was made; and the problem is still unsolved. The minimum proposals are that the number of functionaries shall be sharply reduced, that those remaining shall be better paid, that reasonable security of tenure, on the English, American, and German models, shall be established; and many reformers, both among the functionaries and outside, urge a comprehensive law introducing a single, nation-wide system of competitive examinations, such as is most fully operative at the present day in Great Britain under the order in council of 1870.[1]

[1] See p. 89. There is no good account of the French civil service in English. One of the best French accounts is A. Lefas, *L'État et les fonctionnaires* (Paris, 1913). See references on the system of local administration and its reform, p. 483 below.

CHAPTER XXIII

THE STRUCTURE OF PARLIAMENT

The Bicameral System. Upon the break-up of the Estates General in 1789, France definitely abandoned the plan of a national assembly based on the medieval principle of orders or estates. For upwards of a hundred years, however, the form of parliamentary organization to be substituted remained uncertain. During the Revolution ultra-democratic reformers favored a national assembly of but one house, and not until the constitution of 1795 was promulgated was a frame of government making provision for a legislature of two houses put in operation. The bicameral system of 1795 99 was succeeded by the anomalous legislative régime of Napoleon; but under the Constitutional Charter of 1814 the two-house principle was revived and continuously adhered to for thirty-four years. The legislative organ of the Second Republic (1848 52) was a unicameral assembly. But an incident of the transition to the Second Empire was the revival of a Senate; and throughout the reign of Napoleon III the legislative chambers were nominally two in number, although only in 1870 was the Senate as a legislative body made coördinate with the *Corps législatif*.

Down to 1875 the political experience of the nation had not proved either the unicameral or the bicameral system clearly superior, and during the deliberations of the National Assembly on the proposed organic laws the subject was long and ably debated. The Legitimists and other conservatives inclined to the bicameral plan, in the hope that an upper chamber would serve as a barrier against revolutionary movements; although it was pointed out that the system of two chambers had not averted the Napoleonic *coup d'état* of 1799. The radical followers of Gambetta, and most other Republicans, favored the unicameral principle, without being disposed, however, to insist upon it very firmly. Indeed, English and American precedent offered a strong argument in the other direction; and the ultimate decision upon the bicameral plan was inspired perhaps most of all by the consideration that if a Senate had proved as useful as it

was represented to be in the United States, France, as a great republic, ought to have a similar feature in her constitution.

Hence, the opening provision of the Law on the Organization of the Public Powers, adopted February 25, 1875, was that the law-making power should be exercised by a national parliament consisting of a Chamber of Deputies and a Senate.[1] The one body was intended to rest upon a broadly democratic basis. The other was planned, as was then customary with second chambers, to stand somewhat removed from the immediate control of the voters. But both were charged with the primary duty of enacting into law the will of the people, in whom the sovereignty of the French nation was, and is, clearly lodged. Any one who analyzes the French governmental system as it operates to-day will be impressed with the fact that the structure and organization of the parliamentary assembly have lent themselves to the usages of a democratic state in a measure far exceeding that expected, or indeed intended, by the founders of the new order.

Composition of the Senate. — Having decided that the parliament should consist of two branches, the National Assembly faced the difficult problem of creating an upper chamber that should not be a mere replica of the lower one, and yet should not inject into a democratic constitutional system an incongruous element of aristocracy. In the nature of things, second chambers must be hereditary, appointed, elected, or composed of persons designated by two or more of these processes. It is obviously impossible to plant an hereditary system in a new constitution of a democratic state, and no time was wasted in discussion of such a plan. Appointment by the president of the republic was considered; but there was the weighty objection that the president was himself to be elected by a body in which the senators would be an important element. Election was proposed and discussed in many forms: direct popular election by the same voters who chose the deputies; direct popular election under a more limited franchise; indirect election, which in turn could be made to take many different forms.

The device hit upon was a compromise, involving elements of both indirect election and appointment. Like most compromises, it was not shaped on any single principle, and it had no strictly scientific basis. But it combined the ideas of a large number of able men, and in most of its features it proved more

[1] In point of fact, the law on the Organization of the Senate had been adopted on the previous day.

durable than its authors dared hope. The plan was contained in the Law on the Organization of the Senate, adopted February 24. In a word, it was that the Senate should consist of three hundred members, of whom two hundred and twenty-five should be elected (two hundred and eighteen by the *départements* of France proper and seven by Algeria, Belfort, and the colonies) and seventy-five should be designated by the National Assembly itself.[1] No one should be chosen who had not attained the age of forty years, and who was not in enjoyment of full civil and political rights. The elected members were allotted to departments on the basis of population. The departments of the Seine and the Nord received five each; six others, four each; twenty-seven, three each; and the remainder, two each. These senators were to be elected on a general ticket, by an electoral college meeting at the capital of the department (or colony), composed of (1) the department's representatives in the Chamber of Deputies, (2) the members of the departmental general council, (3) the members of all *arrondissement* councils within the department, and (4) delegates elected, one by each communal council, from among the municipal, *i.e.*, communal, voters.[2] The term was to be nine years, and the seats of one third of the elected members were to fall vacant every three years, just as one third of the senatorial seats fall vacant every two years in the United States. The seventy-five members elected by the National Assembly were to retain their seats for life, vacancies being filled as they arose by the Senate itself.[3] The reason for introducing this coöperative group was twofold — first, to provide a continuous, steadying element which would be beyond the reach of fluctuations of public opinion, and, second, to open an easy way for men of distinction in science, letters, law, industry, or commerce to be made members of the body.[4] It was assumed that the group would be conservative, if not indeed reactionary. But it did not fall out so, because the Legitimists, rather than permit Orleanists to be chosen, voted for republicans; hence, of the seventy-five members originally named by the Assembly, only eighteen were monarchists.

The system thus instituted continues, in the main, at the

[1] Dodd, *Modern Constitutions*, I, 288.

[2] The department is the largest area for purposes of local government. The departments are divided into *arrondissements*, and the *arrondissements* are composed of communes. See Chap. XXVI.

[3] Nomination of these life members by the president of the republic was strongly urged, but did not prevail.

[4] Esmein, *Éléments de droit constitutionnel* (4th ed.), 768.

present day. The principal variations from it are those introduced in a statute of December 9, 1884, passed in pursuance of the constitutional amendment of the previous August 14 withdrawing constitutional character from the first seven articles of the constitutional law of February 24, 1875. This statute of December 9 provided (1) that the coöptative method of selection should be abolished, and that, while present life members should retain their seats as long as they lived, all seats thereafter falling vacant by the decease of such members should be allotted to the departments, to be filled in the regular manner, and (2) that the electoral college of the department should be broadened to include not merely one delegate named by each communal council, but from one to twenty-four (thirty in the case of Paris), according to the number of members in the council, thus correcting to some extent the disproportionate weight given to the rural communes by the original law.[1] The same measure declared members of families that have reigned in France ineligible; and an act of July 20, 1895, forbids any one to become a member of either branch of Parliament unless he has complied with the law regarding military service.

The Senate, therefore, consists to-day of three hundred members distributed among the departments in approximate proportion to population and chosen in all cases by bodies of electors all of whom have themselves been elected directly by the people or are delegates of those so elected.[2] Election is thus indirect, as was the election of senators in the United States prior to the adoption of the Seventeenth Amendment in 1913; and discussion of the relative advantages and disadvantages of the indirect principle has been no less active than it formerly was in our own country. A resolution in favor of direct election passed the Chamber of Deputies in 1884, though it was dropped when the decision was reached to put life memberships in the way of gradual discontinuance. Twelve years later a brilliant debate took place in the Chamber on two proposed constitutional amendments, one looking to direct election by *scrutin de liste*, *i.e.*, general ticket, in the departments, the other to the further

[1] Dodd, *Modern Constitutions*, I, 310. Gambetta once described the Senate as "the grand council of the communes." In communes having only one senatorial elector the mayor is almost invariably selected to serve.

[2] The present apportionment gives the department of the Seine ten members; that of the Nord, eight; other departments, five, four, three, and two apiece, down to the territory of Belfort and the three departments of Algeria, and the colonies of Martinique, Guadeloupe, Réunion, and the French West Indies, which return one each.

popularization of the electoral colleges. The second was adopted. But the Senate refused to concur.[1] The discussion has since gone on intermittently, although with no tangible results. Among interesting proposals brought out by it is the reconstitution of the chamber, in whole or in part, on the principle of the representation of interests or groups — a plan which, as we have seen, has been advocated as a basis of second chamber reform in England.[2]

In point of fact, the Senate is, as now constituted, a very satisfactory legislative body. From having long been viewed by republicans with suspicion, it has come to be regarded by most Frenchmen as perhaps the most perfect work of the Republic. In these days its membership is recruited heavily from the Deputies, so that it includes not only many men of distinction in letters and science but an unusual proportion of experienced debaters and parliamentarians. A leading American authority has said that it is " composed of as impressive a body of men as can be found in any legislative chamber the world over." [3]

The Chamber of Deputies: General Features. — A curious illustration of the unsymmetrical and incomplete character of the French constitution of 1875 is that whereas one of the three fundamental laws — the first one to be adopted — is devoted to the organization of the Senate, there is nothing at all on the composition of the Chamber of Deputies except the stipulation that the members of that body " shall be elected by universal suffrage, under conditions determined by the electoral law." [4] The size of the chamber, the method of election, the suffrage — whether, indeed, the members should be chosen by the people directly or indirectly — was left to be determined by ordinary legislation. The constitution of the United States, similarly, left various (although fewer) aspects of the composition of the House of Representatives to be fixed by ordinary legislation. But this was largely a concession to states' rights, a consideration which obviously had no bearing in the French situation. The explanation usually offered by French writers is that, whereas

[1] Esmein, *Éléments de droit constitutionnel* (4th ed.), 777–778.

[2] See p. 159. This plan is urged and the entire subject is authoritatively discussed in L. Duguit, "L'élection des senateurs," in *Rev. Polit. et Parl.*, Aug. and Sept., 1895.

[3] Lowell, *Governments and Parties in Continental Europe*, I, 22. The principal treatise on the Senate is G. Coste, *Rôle législatif et politique du Sénat sous la troisième république* (Montpellier, 1917).

[4] Law on the Organization of the Public Powers, Art. 1. Dodd, *Modern Constitutions*, I, 286.

the nature and function, and even the existence, of the Senate was a highly contentious subject, a popular national Chamber, elected by direct universal suffrage, was taken for granted as a feature of the governmental system required alike by present national opinion and by the whole trend of political development during the past hundred years. This being the case, the details of electoral machinery became a matter of secondary importance and could safely be left for determination by statute.[1]

The lack was, however, largely supplied by a comprehensive electoral law which the Assembly itself adopted on November 30, 1875 — a measure which may be considered as in effect a part of the written constitution, although properly it is not such and the French do not so regard it.[2] Together with certain surviving portions of the organic decrees of February 2, 1852, relating to the registration of electors, this act is the law to-day, except in so far as it has been modified by more recent legislation. Amending statutes have been passed, in the main, as follows: (1) June 16, 1885, establishing *scrutin de liste;* (2) February 13, 1889, reviving *scrutin d'arrondissement;* (3) July 17, 1889, prohibiting multiple candidatures; (4) July 29, 1913, altering the method of balloting; and (5) July 12, 1919, reëstablishing *scrutin de liste* and introducing proportional representation.

The law of 1875 prescribed not only that deputies should be elected in single-member districts, but that where, on account of excess of population, it should be necessary to subdivide the normal electoral area, *i.e.*, the *arrondissement*, the boundaries of the specially created districts should be established by law and changed only by law. This meant that Parliament was to have control and that the executive was not to have a chance to gerrymander the electoral districts as had been done notoriously under the Second Empire. A reapportionment is required by law after each quinquennial census. The number of deputies was originally 533. This meant from the beginning a large and somewhat unwieldy legislative body; and there has been a considerable increase of membership, notwithstanding the slow growth of the country's population. On the basis of the census returns of 1906, the number became, in 1910, 597;

[1] Esmein, *Éléments de droit constitutionnel* (4th ed.), 726.

[2] See Poincaré, *How France is Governed*, 161. That the law is not actually a part of the constitution is plainly indicated by the fact that it can be altered by ordinary legislation. From as far back as 1814 the French have been accustomed to consider electoral measures as not of the nature of "constitutional laws." Duguit, *Manuel de droit constitutionnel*, 317.

similarly, after the census of 1911 it was raised, in 1914, to 602. No census was taken during the Great War, and the number of deputies continued without further change until 1919, when provision for representation of the recovered territories of Alsace-Lorraine brought up the figure to 626.

The parliamentary franchise is extended to all men who have attained the age of twenty-one, who are not bankrupts, under guardianship, or in active military or naval service, and who have not by judicial condemnation lost their civil and political rights. Of educational or property qualifications there are none. The only requirements are that the voter shall have his name inscribed on the electoral lists and shall be able either to prove domicile (as defined in Article 102 of the Civil Code) in the commune in which he proposes to cast his ballot or to show that he has been a resident there for six months. Notwithstanding the fact that manhood suffrage has prevailed since the revolution of 1848, there has been no such demand for the enfranchisement of women as has stirred both England and the United States; and no legislation upon the subject has been enacted. Indeed, in 1913 the Chamber of Deputies overwhelmingly rejected a woman's suffrage bill, and two woman's suffrage amendments to the electoral bill of 1919 were voted down decisively.

The terms upon which the suffrage is exercised are fixed by national law. But the keeping and the annual revision of the electoral lists devolve upon the commune; and since 1884 the lists have been identical for communal, district, departmental, and national elections. The registration system, which is based on Napoleon III's organic decree of 1852, is simple, inexpensive, and effective, contrasting sharply with the system prevailing in England before the reform of 1918.[1] The work is actually done in each commune by a commission consisting of the mayor, an appointee of the communal council, and an appointee of the prefect of the department. If a man has residences in several communes he can choose the commune in which he will be registered, but he cannot be a parliamentary voter in one and a municipal voter in another. There is not a trace of plural voting.[2]

[1] See p. 133. Cf. Bodley, *France*, II, 67–77.

[2] The electoral franchise in France is treated historically in A. Tecklenburg, *Die Entwickelung des Wahlrechts in Frankreich seit 1789* (Tübingen, 1911), and more briefly in P. Meuriot, *La population et les lois électorales en France de 1789 à nos jours* (Paris, 1917).

Term and Qualifications. — The full membership of the Chamber is elected simultaneously for a four-year term. Theoretically, as has been observed, the Chamber may be dissolved at any time by the president, with the assent of the Senate. But there has been only one such dissolution (1877), and a newly elected chamber is now practically certain to fill out its full four years. Parliamentary elections, therefore, take place with the same regularity as congressional elections in the United States, although only half as frequently. The term of members was fixed at four years as a compromise between the shorter and longer periods with which France had experimented. The constitution of 1791 made the legislative term two years, the republican instruments of 1795 and 1848 made it three years; on the other hand, the constitution of 1799 and the Charter of 1814 made it five years, and the constitution of 1852 raised it to six. The choice of a four-year period in 1875 has proved generally satisfactory.

On the rule which requires the Chamber to be renewed integrally rather than partially there has, however, been much difference of opinion.[1] In view of the gain in continuity and the other advantages inherent in a system of partial renewal, students of politics have raised the natural inquiry, If partial renewal is (as is generally admitted) desirable in the Senate, why is it not equally so in the Chamber?[2] The answer commonly made is that under a cabinet system of government it is necessary that the chamber which possesses the power to make and unmake ministries shall be completely and instantly responsive to the will of the nation; which means that when dissolutions take place, with a view to ascertaining whether the people are behind the ministry or the chamber, the entire electorate must have an opportunity to express itself simultaneously.[3] In point of fact, dissolutions before the close of the four-year period no longer take place in France. Nevertheless, the entire theory of the cabinet system is such as to give the foregoing reply convincing force.[4]

Members of the Chamber are required to be voters, and not

[1] The constitutions of 1795, 1799, and 1814 provided for partial renewal; those of 1791, 1848, and 1852, for integral renewal.

[2] M. Duguit propounds this query in his article "L'élection des sénateurs," *Rev. Polit. et Parl.*, Sept., 1895, p. 461.

[3] Esmein, *Éléments de droit constitutionnel* (4th ed.), 754–757.

[4] It is, however, to be noted that the Briand ministry brought forward a plan in 1910 calling for extension of the life of a Chamber from four to six years and the election of one third of the members every two years.

less than twenty-five years of age. These are the only positive qualifications. Residence in the constituency represented is not necessary, and deputies sit for districts other than those in which they live considerably more frequently than do congressmen in the United States, although by no means so often as do members of the House of Commons in England.[1] There are, of course, certain disqualifications. No soldier or sailor in active service can be elected; and a law of 1885 debars members of families who have ever reigned in France. In addition, there are incompatibilities; that is to say, there are many public offices, both national and local — in general, those that are salaried — which one cannot occupy and yet become, or remain, a deputy. The list of exceptions is, however, long, and it is to be noted that deputies who are appointed to ministerial posts not only are excepted, but are not under the necessity, as they are in England, of seeking reëlection.[2] Until 1919, all that was required of a person who, possessing the requisite qualifications, wished to be a candidate for a seat in the Chamber was that five days before the election he should deposit with the prefect of the department within which the polling was to take place a declaration, witnessed by a mayor, of the name of the constituency in which he proposed to seek election. Even this trifling formality was introduced only by the Multiple Candidature Act of 1889, which forbids a person to be a candidate in more than one district. Since 1919 one can be a candidate only if supported by the signatures of one hundred voters.[3]

Electoral Procedure. — All parliamentary elections are authorized and proclaimed by a decree of the president of the republic. The electoral process is simple and inexpensive. Voting is by secret ballot, and the balloting lasts only one day. As a rule, the polling takes place in the *mairie*, or municipal building, of the commune, under the immediate supervision of an electoral bureau consisting of a president (usually the mayor), four assessors, and a secretary. In the majority of communes all of the inhabitants are known one to another. For the sake of regularity, however, and to furnish means of identifying the voters as they appear, *cartes électorales* are distributed among the electors in advance of the election. There is a card for each

[1] The electoral law of 1919, which displaced the *arrondissement* by the department as the electoral area, tends to reduce the number of deputies living outside the bounds of their constituencies. See p. 113.

[2] Law on the Election of Deputies, Arts. 6–12. Dodd, *Modern Constitutions*, I, 303–306.

[3] See p. 425.

elector, indicating the name of the department and commune, the nature and date of the election, the name of the elector, his number on the register, and the polling place. Before depositing his ballot the voter hands his card to one of the assessors, who reads off the name inscribed on it for the secretary to check on the list of electors before him. The card is returned, because the elector will need it if a second ballot proves necessary; but a corner is clipped off to prevent it from being used again at the present balloting, and also to provide a means of checking the number of ballots cast. At the close of the polling the votes are counted by the election officers, assisted by "scrutineers" selected from among the electors present; and the counting must be done at tables so placed that the voters can walk around them and survey the process. The returns are immediately transmitted to the chief town of the canton, whence they are sent via the arrondissement capital to the department capital, where the results are announced. Under the system prevailing until 1919, if it was found that no candidate within the district had polled an absolute majority of the votes cast, and at the same time a fourth of the number which the registered voters of the district were legally capable of casting, a second balloting, known as *ballottage*, was ordered for two weeks from the ensuing Sunday. No one of the candidates voted for dropped out of the contest, unless by voluntary withdrawal; new candidates, at even so late a day, might enter the race; and whoever, at the second balloting, secured a plurality was declared elected. The second ballot is a familiar device in continental countries. It is most advantageously used, however, to ascertain the preference of the voters as between the *two* candidates who stood highest at the first ballot — in other words, to secure a majority election. As employed in France, before 1919, it was of doubtful value. The principle is retained in the law of 1919, but, as will appear, it is differently applied.[1]

Formerly the conduct of elections was considerably less satisfactory than it is to-day. The chief difficulty was the lack of adequate protection of the secrecy of the ballot. The electoral law of November 30, 1875, stipulated that voting should be secret, but it unfortunately did not set aside that portion of the electoral decree of 1852 which provided that ballots should be marked outside the voting hall and that they should be handed by the voter to the president of the electoral bureau (usually the mayor), who should deposit them in the urn. As was true

[1] See p. 426.

in England until 1918, and as is still true in some European countries, the ballot-papers were supplied, not by the state, but by the candidates; and often they were distributed to the voters in their homes by the candidate or his agents several days before the election was to take place. The requirement that all ballots should be made of white paper and should be without any outward signs or marks did not, in practice, prevent the papers from being so prepared (as to size, shape, or texture), that the election officer, and even the bystanders who under French usage are freely admitted to the polling places, could readily distinguish between those of the different candidates. The situation was like that which we had in our own American states before they adopted the Australian ballot system, whose cardinal feature is the issuing of ballot-papers only under authority of the state, and to the voters as they actually use them at the polls. Measures designed to secure genuine secrecy of the ballot, and to remedy various electoral abuses, received much attention in Parliament after 1900, but it was only in 1913 that the chambers could come into agreement upon a bill. A law promulgated July 29 of that year provided (1) that when the voter presents himself at the polls he shall be given an official ballot and an opaque envelope furnished by the prefectural authorities, (2) that he shall retire to a private booth and there seal his ballot in the envelope, and (3) that he shall personally deposit the envelope in the electoral urn. These regulations have at last made it possible for an elector to vote in complete secrecy if he desires to do so. The safeguarding of the purity of elections by a general corrupt and illegal practices act, such as exists in England and in our American states, remains to be undertaken; although moderately effective laws against bribery and similar offenses have been passed. It may be added that the central government, through its local agents, exerts much influence in parliamentary elections. But all of the more important political groups have profited at one time or another by the practice, and it is not generally condemned.[1]

[1] The electoral process is described briefly in Esmein, *Éléments de droit constitutionnel* (4th ed.), 745-752, and more fully in Bodley, *France*, II, 89–149. The conditions leading to the reform of 1913 are described in J. W. Garner, "Electoral Reform in France," in *Amer. Polit. Sci. Rev.*, Nov., 1913. The electoral system, in general, as it was before the revolutionizing legislation of 1919 is described in M. Block, *Dictionnaire de l'administration française* (5th ed., Paris, 1905), I, 1208–1244; E. Pierre, *Code des élections politiques* (Paris, 1893); E. Zevort, *La France sous le régime du suffrage universel* (Paris, 1894); and Chaute-Grellet, *Traité des élections*, 2 vols. (Paris, 1897). The subject is treated on comparative lines in

Electoral Reform: Scrutin d'arrondissement and Scrutin de liste. — In the decade preceding the Great War there was much discussion, in Parliament and throughout the country, of questions pertaining to the remodeling of the electoral system. Indeed, it may be said that after the relations of church and state were finally fixed by the separation law of 1905 electoral reform took the place of the religious question as the paramount issue in French domestic politics. The questions under consideration related only incidentally to the franchise. The country already had manhood suffrage. There was no plural voting. The only possible franchise question was the extension of the suffrage to women, for which, as has been said, there has been less demand in France than in Great Britain, the United States, and a number of other countries.[1] The questions which assumed political importance were rather such as related to the conditions under which the existing scheme of manhood suffrage should be operated.

Chief among these questions was the electoral area to be employed in parliamentary elections. On this point two principles have contended for favor in France ever since manhood suffrage was established. The one is *scrutin uninominal*, involving the distribution of the deputies among small, single-member constituencies; the other is *scrutin de liste*, involving the election of several deputies within a larger area on a general ticket, as, for example, presidential electors are voted for in an American state. The area usually employed as a single-member constituency has been the *arrondissement;* hence the single-member plan is commonly designated *scrutin d'arrondissement*. The list system, with the department as the area, prevailed from 1848 to 1852, but the elections of the Second Empire were carried out under *scrutin d'arrondissement*. Revived in 1870 by the Government of National Defense for the election of the National Assembly, *scrutin de liste* was again displaced, in 1875, by the Law on the Election of Deputies, which stipulated that deputies should be "elected by single districts," one in each *arrondissement*.[2] The republican elements inclined strongly to the list system, and in his last years Gambetta put himself at the head of a movement for its reëstablishment. In 1881 a bill on the subject, after passing in the Chamber, was rejected by the

Lefèvre-Pontalis, *Lois et les mœurs électorales* (Paris, 1885), and *Les élections en Europe à la fin de dixneuvième siècle* (Paris, 1902).

[1] P. de Poulpiquet, *Le suffrage de la femme en France* (Paris, 1913).

[2] Art. 14. Dodd, *Modern Constitutions*, I, 306.

Senate. But four years later such a measure became law, and the department once more became the electoral area. The results were disappointing to the supporters of the change, for at the ensuing elections the conservative and reactionary forces in the Chamber were decidedly strengthened. Moreover, General Boulanger found the system admirably adapted to his questionable purposes; his plan to secure the indorsement of the mass of the French people by standing for election in each successive constituency in which a vacancy arose could practically be realized by carrying a few of the large departments such as the Seine and the Nord. The upshot was that, before another national election came on, Parliament, in February, 1889, repealed the act of 1885 and restored the *scrutin d'arrondissement*.[1]

From 1889 to 1919 the normal electoral area was, therefore, the *arrondissement*. Each administrative *arrondissement* in the departments and each municipal *arrondissement* in Paris and in Lyons [2] returned one deputy, regardless of population or size. An *arrondissement* containing more than one hundred thousand people was entitled to one additional deputy for every hundred thousand, or fraction thereof, in excess; and in such a case the *arrondissement* was laid out in the requisite number of single-member sub-districts. This was as far as the principle of equal electoral districts was carried. A reapportionment involved nothing more than a fresh measuring up of the *arrondissements* by this standard; the *arrondissements* themselves were permanent administrative areas whose boundaries were rarely or never changed. This meant that the number of voters varied enormously, not only from *arrondissement* to *arrondissement*, but even within the constituencies of the same *arrondissement* from election to election. Five *arrondissements* constituting the department of Basses-Alpes, containing (in 1914) 107,234 inhabitants and 33,677 electors, returned five deputies; five *arrondissements* composing the department of Sarthe, containing 419,370 inhabitants and 120,690 electors, also returned five deputies. The *arrondissement* of Carcassonne at the election of 1889 had a population just exceeding one hundred thousand, and was divided into two constituencies, each returning a deputy. But at the census of 1891 the population had dropped slightly under one hundred thousand, whereupon the entire *arrondissement* became one constituency returning a single member.[3] To employ

[1] Dodd, *Modern Constitutions*, I, 318.
[2] See p. 480.
[3] Bodley, *France*, II, 86.

English phraseology, France scrupulously enforced the rule of "one man, one vote," but ignored the rule of "one vote, one value."

Those who criticized the electoral system as it stood in 1914 were by no means agreed upon the changes that ought to be made; but there were two principal programs. One called simply for the substitution of *scrutin de liste* for *scrutin d'arrondissement*. The other proposed both a revival of *scrutin de liste* and the adoption of a plan of proportional representation. The arguments most frequently heard in behalf of a return to the list system were: (1) *scrutin uninominal* too greatly restricts the political horizon of both the voter and the deputy. The voter tends to regard the deputy as a mere agent sent to Paris by the community to obtain offices and favors for his neighbors; the deputy is likely to fall in with this view of his function and to take only a secondary interest in legislative problems which are of importance to the country as a whole. If, it was urged, all deputies from a department were elected on a single ticket, the voter would have more power and would value his privilege more highly, the candidate would be in a position to make a more dignified campaign, and issues which are national in their scope would less frequently be obscured by questions and interests of a petty and purely local character. (2) *Scrutin de liste* harmonizes better than *scrutin d'arrondissement* with the theory of representation in France, which is that deputies go to Paris as representatives of the nation as a whole, and not of a single locality. (3) The list system would enable the deputy to view with equanimity the suppression of various unnecessary local offices and honors, and hence would promote administrative reform. (4) The election of deputies from larger districts would diminish the evil of government interference in elections, for the reason that the larger the district from which the deputy is chosen the more difficult it would be to influence enough voters to affect the result. (5) Enlargement of the electoral area would tend to correct the gross inequalities of representation which arise from maintaining a multiplicity of petty and unchangeable electoral circumscriptions.[1] It is true that in the period 1885–89 these various ends were not appreciably attained; indeed, as has been said, the system lent itself to the menacing operations of the ambitious Boulanger as *scrutin d'arrondissement*

[1] Duguit, *Traité de droit constitutionnel*, I, 375–376. These and other arguments are clearly and fully presented in Garner, "Electoral Reform in France," in *Amer. Polit. Sci. Rev.*, Nov., 1913.

could not possibly have done. It is but fair, however, to observe that the trial of the system was very brief (at a single general election), and that it fell in a period of unusual political unsettlement.

Electoral Reform: Proportional Representation. — "Elected assemblies," declared Mirabeau, more than a century ago, "may be compared to geographical charts, which ought to reproduce all the elements of the country with their proportions, without allowing the more considerable elements to eliminate the lesser"; and in the judgment of many French reformers of more recent days a simple enlarging of the electoral unit, however desirable in itself, would be by no means adequate to place the national parliament upon a satisfactory basis. Before the close of the nineteenth century, demand arose for the adoption of some scheme whereby minorities in the several departments should become entitled to a proportionate voice in the Chamber at Paris. Hence a second program of reform became that calling not merely for the *scrutin de liste*, but also for proportional representation. Within the past two decades the spread of proportional representation in Europe has been rapid. Beginning in 1891, the device has been adopted by one after another of the Swiss cantons, until now it is in use in about half of them. Since 1899 Belgium has employed it in the election of all members of both chambers of her parliament. In 1906 it was adopted by Finland and by the German state of Württemberg. In 1908 Denmark, which has employed the system in the election of members of the upper chamber since 1867, extended its use to election in the municipalities; and in 1915 it was introduced in the election of members of the lower parliamentary chamber. In 1907 an act of the Swedish parliament (confirmed after a general election in 1909) applied it to elections for both legislative chambers, all parliamentary committees, and provincial and town councils.[1] In France a Proportional Representation League, established in 1909, steadily carried on vigorous and nation-wide propaganda. The principal arguments employed were: (1) that the proposed reform would greatly increase the aggregate vote cast in parliamentary elections, since electors

[1] The plan has made large headway also outside of Europe. The first English-speaking state to adopt it was Tasmania, where, after being in partial operation in 1896–1901, it was brought fully into effect in 1907. By an electoral law of 1900, Japan adopted it for the election of the members of her House of Commons. The system was put in operation in Cuba, April 1, 1908, and was adopted in Oregon by a referendum of June 1, 1908. There have been several later adoptions, *e.g.*, Switzerland, for the election of the National Council, in 1918.

belonging to minority parties would be assured of actual representation; (2) that it would no longer be possible for the number of voters unrepresented by deputies of their own political faith to be in excess, as they frequently were, of the number of electors so represented;[1] and (3) that a parliament in which the various parties are represented in proportion to their voting strength can be depended upon to know and to execute the will of the nation with more precision than can a legislative body elected under the majority system.[2]

The Government and Electoral Reform. — After 1905 every ministry was more or less explicitly committed to electoral reform. In 1907 a special committee of the Chamber of Deputies (the *Commission du Suffrage Universel*) reported a scheme of proportional representation,[3] and in 1909 the Chamber passed a resolution favoring the adoption of the principle in some form. It will be observed, of course, that while *scrutin de liste* might be set up without proportional representation, any plan of proportional representation would make necessary the enlarging of the electoral area and the choice of deputies on a general ticket. At the parliamentary elections of April-May, 1910, the issue of electoral reform overshadowed all others. According to a tabulation by the Ministry of the Interior, of the 597 deputies chosen at this time, 94 had not declared themselves on electoral reform, 35 were opposed to any change in the existing system, 32 were in favor of a slightly modified *scrutin d'arrondissement*, 64 were in favor of *scrutin de liste* on a majority basis, 272 favored *scrutin de liste* combined with proportional representation, and 88 were known to be friendly to electoral reform although not committed to any particular program.

On at least four occasions in the next two years the Chamber elected in 1910 declared by heavy majorities in favor of reform; and it almost constantly had under consideration some measure upon the subject. The ministry of M. Poincaré, established at the beginning of 1912, asserted that the nation had unmistakably

[1] It was asserted by M. Benoist, founder of the League, that this situation had existed uninterruptedly since 1881. An interesting fact cited is that the Separation Law of 1905 was adopted in the Chamber by the votes of 341 deputies, who represented in the aggregate only 2,647,315 electors in a national total of 10,967,000. Cf. Duguit, *Droit constitutionnel*, I, 380.

[2] Duguit, *op. cit.*, argues forcefully in behalf of the proposed change. For adverse views, cogently stated by an equally eminent French authority, see Esmein, *Éléments de droit constitutionnel* (4th ed.), 240–266.

[3] Elections were to be by *scrutin de liste*, and the elector was to be allowed to cast as many votes as there were places to be filled and to concentrate as many of these votes as he liked upon a single candidate. An English translation of the proposed law is printed in Humphreys, *Proportional Representation*, 382–385.

expressed its desire for reform and promised to take steps forthwith to obtain a law that would "secure a more exact representation for political parties and would confer upon deputies the freedom that is required for the subordination of local interests in all cases to the national interest." During succeeding months consideration of the subject was pressed in the Chamber of Deputies, and on July 10 the Government's Electoral Reform Bill, providing for both *scrutin de liste* and proportional representation, was carried by a vote of 339 to 217.[1] In the Senate the bill encountered determined opposition. It was referred to a commission, whose report was unfavorable; and under the persuasive leadership of Clemenceau and Combes, who contended that the representation of minorities would operate to strengthen the clerical elements, the body finally rejected the measure. The deadlock between the two houses which followed the bill's defeat caused the fall of the Briand ministry in February, 1913. Two succeeding ministries — those of Barthou and Doumergue — contributed nothing, but the issue was clearly before the country at the elections of April, 1914, and the results again indicated strong popular interest in the subject. When, however, in the following summer, the way became reasonably clear for a resumption of electoral discussion in Parliament, the issue was again thrown completely into the background, this time by the outbreak of the Great War.[2]

[1] The text of this measure is printed in *Rev. du Droit Public*, July–Sept., 1912. See B. Laverge, "La réforme électorale jugée au point de vue de ses résultats statistiques," in *Rev. Polit. et Parl.*, Jan., 1913; G. Lachapelle, "La réforme électorale devant le Sénat," in *Rev. Polit. et Parl.*, Mar. 10, 1913; G. Gidel, "La réforme électorale en France et en Belgique," in *Rev. des Sci. Polit.*, July–Aug., 1913.

[2] The literature of the movement for electoral reform up to 1914 is voluminous. Some of the best books are C. Benoist, *Pour la réforme électorale* (Paris, 1908); J. L. Chardon, *La réforme électorale en France* (Paris, 1910); J. L. Breton, *La réforme électorale* (Paris, 1910); H. Leyret, *La tyrannie des politiciens* (Paris, 1910); Fouillée, *La democratie politique et sociale en France* (Paris, 1910); and T. Petitiean, *La représentation proportionnelle devant les chambres françaises* (Paris, 1915). The best brief survey in English is J. W. Garner, "Electoral Reform in France," in *Amer. Polit. Sci. Rev.*, Nov. 1913. Other magazine articles include: F. Faure, "La législature qui finit et la réforme électorale," in *Rev. Polit. et Parl.*, Dec. 10, 1909; Marion, "Comment faire la réforme électorale," *ibid.*, Feb. 10 and Mar. 10, 1910; M. Deslanders, "La réforme électorale," *ibid.*, July 10, 1910; A. Varenne, "La réforme électorale d'abord," *ibid.*, Nov. 10, 1910; G. Lachapelle, "La discussion du projet de réforme électorale," *ibid.*, May 10, 1912; F. Faure, "Le vote de la réforme électorale," *ibid.*, Aug. 10, 1912; L. Milhac, "Les partis politiques français dans leur programme et devant le suffrage," in *Ann. des Sci. Polit.*, July 15, 1910; G. Scelle, "La représentation politique," in *Rev. du Droit Public*, July–Sept., 1911. On the question of proportional representation see G. Tronqual, *La représentation proportionnelle devant le parlement français* (Poitiers, 1910); F. Lépine, *La représentation proportionnelle et sa solution* (Paris, 1911); N. Saripolos, *La démocratie et l'élection proportionnelle* (Paris, 1900). G. Lachapelle, *La représentation propor-*

The Electoral Law of 1919. — The situation of France was unlike that of Great Britain in that whereas the latter country was within a year and a half of a national election when the war came on, the former had a parliament which had but barely received its mandate. From December, 1915, the British parliament elected in 1910 remained operative only by virtue of successive resolutions prolonging its own life; and it is not strange that as the years passed it became necessary to plan, even though in war-time, for a fresh appeal to the electorate. The electoral act which by common admission this appeal entailed was passed early in 1918,[1] although it fell out that the election was not actually held until after the armistice. In France, the parliament elected in 1914 would have held in any case until the spring of 1918, and the extension of its life by the few months necessary to carry it past the armistice involved no serious question of public policy. A war-time election was, therefore, never imminent, and electoral legislation could easily be allowed to lie over.

Promptly after the armistice, however, a national election began to loom up; and, as had been the case in Great Britain, a necessary preliminary seemed to most people to be a new electoral law.[2] There was, to a degree, the same necessity of adapting the electoral system to an electorate profoundly altered by the war; there were, also as beyond the Channel, great electoral policies to be determined which had been agitating the nation for years before 1914. The upshot was the appearance of a comprehensive electoral bill, the "proposition Dessoye," which after some weeks of debate passed the Chamber of Deputies, April 18, 1919, by a vote of 277 to 138. There was a strong current of opposition in the Senate, but the measure, somewhat amended, was passed by that body, June 26, by a vote of 134 to 87. Rather than prolong the discussion, the Chamber accepted the bill, July 8, by a vote of 328 to 103 (71 not voting) as the upper house had passed it, and four days later the act was duly promulgated. Clemenceau, who at the time was premier, did not personally favor the changes which the statute provided for, but he did not publicly oppose them. Had he done so, the

tionnelle (Paris, 1910); *ibid.*, "Représentation proportionnelle," in *Rev. de Paris*, Nov. 15, 1910; *ibid.*, "L'Application de la représentation proportionnelle," in *Rev. Polit. et Parl.*, Dec. 10, 1910. Proportional representation in relation to France is fully discussed in a report of the British Royal Commission on Electoral Systems (1910). Report, Cd. 5163; Evidence, Cd. 5352.

[1] See p. 129.

[2] M. Malzac, "Vers la réforme électorale," in *Rev. Polit. et Parl.*, May, 1919.

adoption of the measure would, under the principles of the cabinet system, have entailed his resignation.

The most notable features of the new law were the revival of *scrutin de liste* and the adoption of a limited form of proportional representation.[1] The department again became the electoral area; every such division is entitled to one deputy for every seventy-five thousand inhabitants and major fraction thereof, with a minimum of three. However, it was stipulated that ultimately every department electing more than six deputies should be divided into circumscriptions electing from three to six each. The law, therefore, contemplated a restricted list system, which may be thought of as a compromise between *scrutin uninominal* and voting by large departmental lists carrying candidates for a dozen or more seats. Lists must be deposited with the prefect of the department at least five days before the election, and each candidacy must be supported by the signatures of at least one hundred electors living within the department. No list may contain names in excess of the number of seats to be filled; and every isolated candidate is considered as forming a separate list. All lists must be posted at the voting places two days before the election; and an elector may vote for a list as it stands on the printed ballot or he may cross off names and write in others drawn from the other lists.

The method of determining the results of the balloting in a constituency is somewhat complicated, but the essentials of it can be stated as follows: (1) all candidates voted for on an absolute majority of the ballots cast (after unmarked or incorrectly marked ballots have been thrown out) are declared elected, up to the number of seats to be filled; (2) if seats remain, they are apportioned by applying (*a*) an "electoral quotient," which is obtained by dividing the whole number of ballots cast by the total number of seats to be filled, and (*b*) a series of "averages," obtained — one for each list — by dividing the total number of votes cast for all candidates on the list by the number of candidates on that list; (3) each list receives seats (is so far as any remain to be assigned) according to the number of times that the electoral quotient is contained in its average; (4) in each list seats are allotted to candidates in the order of the vote they have received, in case of a tie the older candidate getting the seat; (5) no candidate may be declared elected unless his vote exceeds

[1] The law was made applicable to Algeria and the colonies, as well as to all of France as constituted before the war; Belfort and Alsace-Lorraine were to be provided for in a supplementary measure.

one half of the average of the list to which he belongs; (6) if the number of ballots cast is not greater than one half of the number of registered voters, or if no list obtains a total number of votes equal to the electoral quotient, a second balloting takes place two weeks later; and if no list now obtains the electoral quotient, the seats are assigned to the general body of candidates in the order of the vote they have received. The object of this last provision is to abate in some measure the nuisance which the *ballottage* had come to be under the former system.

The actual working of the proportional principle will be clarified by considering a hypothetical case. Suppose that in a department which elects six deputies the number of ballots cast is 60,240. If these ballots were cast solidly for one group, or "list," of six candidates, the number of votes individually received by the members of the group would be $60,240 \times 6 = 361,440$. But this, of course, will not happen. Many ballots will be cast for other lists, and many more will be cast for mixed groups drawn by the voter from the various lists. Suppose, then, that the votes are distributed among four lists as follows:

List A		List B	
Jean	32,645	Ernest	18,125
Henri	29,827	Hippolyte	16,247
Eustache	29,640	Arsène	15,822
Théophile	25,274	David	12,659
Yves	18,401	Célestin	8,404
Georges	12,524	Firmin	4,031
Total	148,311	Total	75,286
Average	24,718	Average	12,547

List C		List D	
Arthur	15,247	Gaston	5,164
Octave	14,629	Émile	4,032
Raymond	12,172	Alexandre	3,202
Eugène	8,624	Pierre	1,123
Prosper	6,018	Paul	1,119
Gustave	5,101	Alphonse	1,082
Total	61,791	Total	15,812
Average	10,298	Average	2,635

Quotient: $60,240 \div 6 = 10,040$

On looking over these figures,[1] it is seen that one candidate, and only one (Jean), has been voted for on a majority of all ballots cast; hence he is elected. The other five seats will have

[1] The figures are selected with a view to easy visualization of the workings of the system. It should not be inferred that the lists are likely to be "scratched" to such an extent as in the hypothetical example given.

to be filled, as far as proves possible, by applying the electoral quotient. Dividing this quotient into the list averages, it is found that List A is entitled to two more seats, Lists B and C to one seat each, and List D to none. Henri, Eustache, Ernest, and Arthur are, therefore, elected. There is still one seat to be filled, and the law provides that in such a case it shall go to the list having the highest average — provided there is still a candidate on that list whose individual vote is more than half of the list average; otherwise the seat goes to the list with the next highest average, on the same condition. Théophile, therefore, becomes the sixth deputy.

Although the object of proportional representation is always to secure the representation of minorities, the principle can be applied in widely differing ways. The system most in the minds of the authors of the French law was that employed in the election of members of the two chambers of the Belgian parliament;[1] although certain departures were made from that system in the hope of improving upon it. The French plan, like the Belgian, is fundamentally the list system, originally devised by Victor d'Hondt, of the University of Ghent. Unlike the cumulative plan, employed in the election of members of the legislative council in the province of Good Hope, it does not permit the elector to give more than one vote to a candidate. Unlike the plan propounded by the Englishman Hare in 1859, indorsed by John Stuart Mill,[2] and used to-day in Switzerland, Norway, and elsewhere, it does not allow him to indicate his second and third choices, for he can vote for only as many candidates as are to be elected; hence it it is not a *preferential* system. But the plan has many acknowledged advantages, *e.g.*, simplicity, adaptability to large constituencies, and easy compatibility with the Australian ballot, and it has won most general approval throughout the world. Its results in France can be judged only after an extended period of trial.[3]

[1] For brief accounts of the Belgian system see Ogg, *Governments of Europe* (1st ed.), 542–545; J. Humphreys, "Proportional Representation in Belgium," in *Contemp. Rev.*, Oct., 1908. The subject is more fully considered in Humphreys, *Proportional Representation;* and it is discussed in relation to the French movement in G. Lachapelle, *La représentation proportionnelle en France et en Belgique* (Paris, 1911).

[2] *Representative Government*, 136; Lecky, *Democracy and Liberty*, I, 223–225.

[3] The text of the French law of 1919 is printed in *Rev. Polit. et Parl.*, Aug. 1919, pp. 205–207. There is a good exposition in G. Lachapelle, *Les élections générales du 16 novembre 1919* (Paris, 1920). On the various forms of proportional representation see Garner, *Introduction to Political Science*, 458–469.

CHAPTER XXIV

THE PARLIAMENTARY SYSTEM

Sessions of the Chambers. — The authors of the constitution of 1875 believed that it would be dangerous to establish the seat of the new government in Paris. The Commune was fresh in their memory; they were impressed by the decision of the United States to locate its capital outside of the principal centers of population; and far from agreeing with Robespierre that a legislature ought to deliberate under the eye of the greatest possible number of citizens, they considered that such a body should carry on its work in entire freedom from influences springing from its immediate environment. Consequently they wrote into the constitutional law of February 25, 1875, the stipulation that the seat of the executive power and of the chambers should be Versailles.[1] A few years of experience showed, however, that this precaution was unnecessary and that it entailed certain distinct disadvantages. Tendencies to disorder in Paris steadily diminished. Furthermore, no city could ever displace the metropolis as the historic and natural head and center of the nation. In addition, the ministers found it irksome to go back and forth incessantly between Versailles and the offices from which the work of administration was directed, these offices having never been removed from Paris. Hence, in June, 1879, the article which fixed the seat of government at Versailles was rescinded, and three weeks later a statute transferred both the executive power and the chambers to Paris.[2] From that day, the sessions of the Chamber of Deputies have been held in the Palais Bourbon, a structure dating from the eighteenth century, and situated in the neighborhood of a group of ministerial buildings at the end of the Boulevard St. Germain, directly across the Seine from the Place de la Concorde; those of the Senate have been held in the Palais de Luxembourg, the historic seat of French upper chambers since the Revolution, and located in the Rue de Vaugirard, facing the Luxembourg garden.

The frequency and duration of parliamentary sessions are

[1] Art. 9. Dodd, *Modern Constitutions*, I. 288.
[2] Duguit et Monnier, *Les constitutions*, 336–337.

regulated partly by the constitution, partly by the chambers themselves, and partly by the president of the republic, or at all events by the ministers acting in his name. The constitutional law of July 16, 1875, requires that the chambers shall assemble annually on the second Tuesday of January, unless convened at an earlier date by the president of the republic; that they shall continue in session through at least five months of each year; and that the sessions of the two houses shall always begin and end at the same time.[1] The second of these requirements does not mean that the chambers must actually sit for five months, whether or not public business demands. It means, rather, that they have a constitutional right to be in session during at least that portion of every year, and that the president cannot use his power of adjournment to deny them this right. As a matter of fact, they are in session throughout the entire year, save during a somewhat extended vacation in the summer and two or three brief recesses at other seasons. The chambers have no independent power to terminate their sessions; but they can vote to take a recess, and they can cause an extraordinary session to be called if a majority of the members of both bodies present a request to the president of the republic to that effect. Regular sessions are announced by letters of convocation sent to members by the presidents of the two chambers (although they would take place automatically without call); but the president of the republic convokes all extraordinary sessions, closes all sessions, and also adjourns the chambers, subject to the limitation mentioned above, and to the further restriction that he may not adjourn them more than twice during the same session, and never to exceed one month. Adjournment is to a definite date. The power to prorogue, *i.e.*, to suspend the sittings for an indefinite period, does not exist. Finally, the president of the republic has the power to dissolve the Chamber of Deputies, with the consent of the Senate — a right which, however, has been exercised only once, *i.e.*, in 1877.[2]

[1] Art. 1. Dodd, *Modern Constitutions*, I, 290–291. With a view to providing for an awkward contingency, the constitution stipulates that if, at a time when the Chamber of Deputies has been dissolved, the presidency falls vacant, the Senate shall immediately come into session alone (law of July 16, 1875, Art. 3).. In such a case, the council of ministers would act as chief executive until a new chamber was chosen and a new president elected, and it would be responsible to the Senate for its acts. The Senate also sits independently when convened as a high court of justice. See p. 463.

[2] See p. 445. On the regulation of the sessions of the chambers see Duguit, *Manuel de droit constitutionnel* (2d ed.), 343–348, and Esmein, *Éléments de droit constitutionnel* (4th ed.), 607–622.

Only slowly and grudgingly, as has been pointed out, did the English Parliament adopt the principle of publicity of proceedings, whether as applied to the attendance of spectators at the sittings or to the publication of debates.[1] Since 1789, full legislative publicity has, however, been repeatedly proclaimed in France as an essential guarantee of political liberty; and the constitutional law of July 16, 1875, provides that the sittings of the chambers shall be public, while yet allowing the doors to be closed in either house if, on request of a specified number of members, a proposal to that effect is carried by an absolute majority. The number of members necessary to make this request has been fixed by law at five in the Senate and twenty in the Chamber of Deputies. The power, however, has fallen into almost total disuse. The public is admitted as long as there are vacant seats in the galleries, and the publication of reports of debates by the press is practically unrestricted.

Status of Members. — Under the French theory of representation, the nation expresses its will through the electorate, the elected chambers become the organ of the sovereign people, and every deputy and senator represents this national sovereignty as a whole, and not merely his own constituency. One of the principal arguments which led, in 1919, to the substitution of the department for the *arrondissement* as the electoral area was that the member chosen from the smaller district was too apt to lose sight of his obligation to view public questions in a broadly national, rather than in a narrowly local, way. As in the United States, each house is judge of the qualifications of its members; and each has complete control over the continuance of a member in its ranks during the full period for which he has been chosen. If a member desires to resign, he can do so only with the permission of the chamber to which he belongs; if he loses his civil rights or otherwise becomes disqualified, it is for that chamber to say when he shall retire, and indeed whether he shall retire at all; and the chamber may expel him for reasons that seem to it sufficient, regardless of his qualifications. One must hasten to add, however, that a member of the Chamber of Deputies who accepts a salaried public position automatically vacates his seat, although he may be reëlected thereto if the office which he has taken is compatible with membership. Salaried positions are, in general, not compatible. But exception is made in favor of deputies who become ministers or under-secretaries; indeed, they are not required, as are members of the English House of Com-

[1] See p. 200.

mons in a similar case, to stand for reëlection. Curiously, and unfortunately, the general rule against holding a salaried public office simultaneously with a parliamentary mandate does not apply to the Senate.[1]

An important rule of representative government which passed from England to the continent is that the members of the legislature shall enjoy, within the legislative halls, entire freedom of speech, voting, and procedure.[2] A guarantee of this nature was placed in the French constitution of 1791, and throughout the transmutations of later years a similar provision was always to be found, either in the constitution or in a statute. The constitution of 1875 says: "No member of either chamber shall be prosecuted or held responsible on account of any opinions expressed or votes cast by him in the performance of his duties."[3] The responsibility from which the member is thus relieved is, of course, legal rather than political; the provision amounts to a suspension of the penal law, in so far as that law would be applicable to words spoken or acts committed by the deputy or senator in the exercise of his mandate. In another direction, immunity, however, goes still farther; for the constitution adds: "No member of either chamber shall, during the session, be prosecuted or arrested for any crime or misdemeanor, except upon the authority of the chamber of which he is a member, unless he be taken in the very act. The detention or prosecution of a member of either chamber shall be suspended for the session, and for the entire term of the chamber, if the chamber requires it."[4] The object of this provision is the same as that of the foregoing clause, namely, to give members a maximum of independence and of security against interference, intimidation, and other forms of political persecution. For the sake of the larger interests of the state, which can be best served by a free and fearless legislature, members are shielded during sessions against the normal operation of the penal law, except in so far as the chamber to which they belong is willing that they shall be proceeded against. Under the country's earlier republican constitutions this immunity was continuous during membership, but in its present form it lapses between sessions. Finally, it is to be observed that im-

[1] Law on the Election of Deputies (November 30, 1875), Art. 11. Dodd, *Modern Constitutions*, I, 305. See Duguit, *Manuel de droit constitutionnel* (2d ed.), 337–338.

[2] This immunity was expressly affirmed in the Bill of Rights of 1689. See p. 31.

[3] Law of July 16, 1875, Art. 13. Dodd, *Modern Constitutions*, I, 293.

[4] *Ibid.*, Art. 14. Dodd, *op. cit.*, I, 293–294.

munity extends only to crimes and misdemeanors (*crimes et délits*), not to contraventions of police regulations; also that there is no immunity at all if the member's guilt is so clearly established that the law can be allowed to take its course without any suspicion that he is being made the victim of persecution.[1]

It has been explained that in England it was long customary for the constituents of a member of the House of Commons to reimburse him for the expenses which he incurred in attending parliamentary sessions as their representative.[2] Up to the eighteenth century a similar practice prevailed in France; each order — nobility, clergy, and *tiers état* — made such provision as it chose for the expenses of its delegates in the Estates General. The Revolution gave birth, however, to the doctrine that members of the national legislative body or bodies should be indemnified out of the national treasury, in order that parliamentary seats should be equally accessible to all. Provision of this character was made in the constitution of 1795; and, except during the period 1817–48, the rule has been adhered to without interruption.[3] The constitutional laws of 1875 are silent on the subject. But the organic law of August 2, 1875, provided that senators should receive the same emolument as deputies, and the law of November 30 on the election of deputies fixed this sum at nine thousand francs a year. In 1906 the amount was raised to fifteen thousand francs. In addition, members are entitled, on payment of a nominal sum, to travel free on all French railways.[4]

Organization and Procedure. — At the opening of each regular session, whether or not of a new parliament, each chamber elects its "bureau" and adopts its rules of procedure for the coming year.[5] The bureau is the staff of officers which will have charge of the chamber's affairs during the year. Its composition is regulated, not by the constitution, nor yet by law, but by rules adopted by each chamber to meet its own needs; but in both cases it consists of a president, one or more vice-presidents, several secretaries, and a number of questors. All are elected from the membership of the chamber by secret ballot; the vice-

[1] On parliamentary immunities see Esmein, *Éléments de droit constitutionnel* (4th ed.), 803–816; Duguit, *Manuel de droit constitutionnel* (2d ed.), 338–343.

[2] See p. 173.

[3] It is true that the constitution of 1852 cut off all stipends. But a *senatus-consulte* of the same year restored them.

[4] Esmein, *Éléments de droit constitutionnel* (4th ed.), 817–820.

[5] Law of July 16, 1875, Art. 11. Dodd, *Modern Constitutions*, I, 293.

presidents, secretaries, and questors are chosen by *scrutin de liste;* and all are indefinitely reëligible. There have usually been in each chamber four vice-presidents, six or eight secretaries, and three questors.

Collectively, the bureau exercises a few minor functions; it decides certain questions relating to procedure, and it appoints the force of employees — stenographers, clerks, librarians, doorkeepers, and others — who discharge the routine duties incident to the work of a legislative body. But most of the bureau's functions appertain to each group of officers separately. Some one of the vice-presidents replaces the president whenever the latter is absent, or in case of his death or resignation. The secretaries (of whom at least four must be on duty whenever the chamber is in session) supervise the preparation of the records of the *secrétaires-rédacteurs* and count the votes when there is a division. The questors have charge of accounts, payments, and other fiscal matters connected with the chamber's organization and work. The vice-presidents and secretaries receive no pay as such, but the questors are allowed double the salary of the ordinary member.

The most important officer is, of course, the president. Indeed, the president of the Senate ranks next to the president of the republic, and the president of the Chamber of Deputies ranks third, among the dignitaries of state; it is these men, as we have seen, that are first summoned to the Élysée to give information and advice when a new prime minister is to be appointed. The powers and duties of the president are regulated partly by law, partly by the rules of the house over which he presides; and they are substantially identical in the two chambers. Stated briefly, the president occupies the chair during debate, recognizes claimants to the floor, puts motions, and announces the results of votes. He signs the reports of the chamber's proceedings. He receives petitions, reports, memorials, and other documents addressed to the chamber. He represents the chamber, not only on ceremonial occasions, but in its dealings with the other chamber and with the executive authorities. He can take whatever steps are necessary to maintain order and to protect the independence of the chamber, even to the extent of calling upon the government for armed forces. Unlike the Speaker of the English House of Commons, he is not restricted within the chamber to the functions of a mere moderator. He is expected to discharge the duties of his office impartially, but there is nothing to prevent him from quitting the chair to participate in debate. His posi-

tion, therefore, bears an interesting resemblance to that of the Speaker of the American House of Representatives.[1]

The "bureau," as thus described, is unlike anything to be found in parliamentary organization in the English-speaking world. But the idea of the bureau finds another application which differentiates French parliamentary organization still further from English and American usage. At the meetings of the old Estates General the various orders were accustomed to divide their members by lot into sections, or *bureaux*, which considered proposals in a preliminary way before they were submitted to general deliberation.[2] The practice was revived by the constitution of 1814, and since that date it has been a continuous and essential feature of parliamentary procedure not only in France but, to a large extent, in other continental countries — including Italy, Belgium, and Germany — whose systems of government have been deeply influenced by French usages and ideas. Under rules which were formulated in 1876 on the model of the rules of the National Assembly of 1848, the membership of the Chamber of Deputies is divided into eleven bureaus, of about fifty-seven members each and that of the Senate into nine bureaus, of thirty-three or thirty-four members each. This division is made by lot at the beginning of each session, and a new distribution takes place every month while the session lasts. Each bureau names its own president and secretary, and meetings are called by the president whenever deemed necessary.

At the opening of a new parliament, the bureaus examine the credentials of members, preparatory to a final validation by the chamber. Aside from this, their function relates chiefly to the preliminary consideration of bills and of other proposals submitted to the chamber. Originally, the bureaus performed this service directly; a bill, upon being introduced, was sent to the bureaus, which examined it before the general debate on the floor of the chamber began. But the haphazard composition and the changeableness of the bureaus were serious impediments, and gradually it became the custom to delegate the intensive examination of measures to other groups, known as commissions, *i.e.*, committees, selected to represent the whole number of bureaus. Under this practice, a bureau, upon receiving a bill or other proposal, would briefly discuss the general principles involved, and then would choose by ballot one of its members who, with repre-

[1] Bodley, *France*, II, 194–209; Esmein, *Éléments de droit constitutionnel* (4th ed.), 786–789.

[2] The French ecclesiastical assemblies had a similar practice.

sentatives similarly selected by the other ten bureaus, would form a committee for the more detailed scrutiny of the proposal. In the case of a very important measure, the chamber might instruct the bureaus to designate two, or even three, representatives; so that committees regularly consisted of eleven members (nine in the Senate) or some multiple thereof. Committees, furthermore, were special, in that they could consider only the particular matter referred to them; and they were temporary, in that they went out of existence whenever that matter was disposed of.

The Senate has steadily adhered to this method of handling its business. The plan, however, has many obvious disadvantages. It prevents prolonged and systematic committee investigations of important bills or subjects. It interferes with the operation of the cabinet system by putting the composition of committees practically beyond the control of the ministers. It contributes to ministerial instability by leading to irresponsible amendment of government bills in such ways that the government may find itself obliged to turn against its own measures or resign. All of this is not so serious in the Senate. But in the Chamber of Deputies, where the chief burden of legislative work falls, it long ago became intolerable; and there important changes have been made. As early as 1882 a standing committee on the army was created in the Chamber, and in 1890 a similar committee on the tariff. Between 1894 and 1898 ten different standing committees were authorized at various times, and in the last-mentioned year 1219 projects were considered by sixteen standing committees and 137 by seventy-one special committees.[1] The standing committee as an agency to consider certain classes of legislation, rather than to discuss specific bills, had thus clearly established itself; and in 1902 the rules were revised so as to provide for sixteen such committees, of thirty-three members each, chosen by the bureaus (three members from each) for the duration of a parliament. Special committees of the earlier sort might still be utilized whenever the Chamber desired. Finally, in 1910, a further revision of the rules provided for the election of the members of the standing committees by the Chamber itself, under the principles of *scrutin de liste* and proportional representation. The number of members was raised to forty-four, and it was stipulated that representatives of the parties on each committee should be nominated by the respective

[1] *Chambre des Députés, Documents Parlementaires*, Oct.–Dec., 1902, p. 270.

party groups in the Chamber.[1] With minor modifications, the committee system in this form is still in operation.

The Process of Legislation. — The functions of Parliament are manifold, but they can be grouped under three main heads: legislation, fiscal control, and supervision of the executive and administrative branches of the government.[2] An English writer has pointed out that, on account of the thoroughness of French political reconstruction between 1789 and 1875, together with the comprehensiveness and durability of the Napoleonic codes of law, the field of legislation is relatively narrower in France than in England and most other countries.[3] If, however, the need of legislation has been in many directions less pressing than elsewhere, social and industrial reforms which the developments of the past forty years have entailed in all lands have imparted a new vigor to French parliamentary activity, so that there has been no perceptible slackening of legislative production; legislation can still be said to be the most fundamental of parliamentary functions. Certain features of the process by which laws are enacted call therefore for attention.

In the absence of constitutional or statutory restrictions, each chamber adopts by resolution at the beginning of a session the rules under which it proposes to work during that session. The rules adopted by the chambers in 1876, on the model of the rules of the National Assembly of 1848, largely survive; but important modifications and additions — such as those introducing the standing committee system in the lower house — are freely made from time to time.[4]

The constitutional law of February 25, 1875, confers the right to initiate legislation upon the president concurrently with the members of the two chambers.[5] Measures which are technically initiated by the president are in reality originated, as a rule, by the ministers. At all events after being approved by the council of ministers, in the presence of the president, they are submitted to Parliament by the premier or some other minister as projets

[1] M. X. Raynaud, "Les modifications du règlement de la Chambre des Députés," in *Rev. de Droit Pub.* (Oct.-Dec., 1917).

[2] This leaves no account of electoral and constituent functions. The three belong, not to Parliament as such, but to the sovereign and organize expanded under a different name and form, viz., the National Assembly.

[3] Bodley, *France*, II. 515–516.

[4] On the subject of rules see A. P. Usher, "The Reform of Procedure in the French Chamber of Deputies," in *Pol. Sci. Quar.*, Sept., 1910; Esmein, *Éléments de droit constitutionnel* (4th ed.), 790–793; and Duguit, *Manuel de droit constitutionnel* (2d ed.), 555–558.

[5] Art. 3; Duguit, *Modern Constitutions*, I. 180.

de lois, or " government bills." Legally, a *projet de loi* is an executive *décret;* hence it cannot be introduced by a minister on his own responsibility, or without the president's signature. A minister can introduce a bill in the simple capacity of a member of one of the chambers, and in the same way as a non-ministerial member. But such a bill is not a " government bill"; and in point of fact the ministers never exercise their legal rights in this direction. Private members' bills are known as *propositions de lois*. They must be presented in writing, and in a prescribed form, and the rules carefully regulate the procedure by which they may be brought up for consideration. Unlike government measures, a private member's bill must pass the scrutiny of a *commission d'initiative*, whose report furnishes the basis for a decision by the chamber as to whether it will " take the proposition under consideration." If the decision is negative, the bill cannot be reintroduced within six months; if it is affirmative, the bill follows the same course as a government measure.

The private members' initiative includes an unlimited right to propose amendments to both *projets* and *propositions*. Indeed, the opportunity of every member to introduce bills and resolutions and amendments thereto, to bring forward proposals which modify the budget, and to consume the time of the chamber with speechmaking and parliamentary byplay is notably great. " It is impossible," said a committee which studied this subject in 1898, " to find a more marked contrast between two institutions than that presented by the [English] House of Commons and the Chamber of Deputies in the individual initiative of the latter and the ministerial initiative of the former. . . . Even if there are abuses of the ministerial initiative in England, we must nevertheless suppress the abuses of the individual initiative, which are only too manifest in our own Chamber."[1] Modifications of the rules in the past twenty years have placed individual initiative under more restraints than formerly. But the situation still contrasts sharply with that in England, and the ministers cannot be regarded as in any true sense the masters of Parliament.[2]

Government bills, and individual bills which the chamber has expressed willingness to consider, are referred in the Senate to the bureaus, and through them to special committees. In the

[1] *Chambre des Députés, Documents Parlementaires*, 1898–99, p. 1492.

[2] On the initiation of legislation see Usher, *loc. cit.*, 488–497. The standard works are E. Larcher, *L'initiative parlementaire en France* (Paris, 1896), and L. Michon, *L'initiative parlementaire* (Paris, 1898).

Chamber of Deputies, bills may be similarly referred. But if they relate to any one of the fields of legislation covered by the standing committees, they go directly to the appropriate committee in this group; and since these fields include such important subjects as tariffs, labor, agriculture, commerce and industry, public works, the army, the navy, foreign affairs, education, and public health, it follows that most bills are handled by a standing committee. Reports of bureaus and committees are printed and distributed, and are presumably in the hands of all members when the general debate in the chamber begins. The hall in which each body sits is semicircular, with as many seats and desks as there are members to be accommodated. In the center stands a raised armchair for the use of the president, and in front of it is a platform, or "tribune," which every member who desires to speak is required to mount. On either side of the tribune are stenographers, whose reports of the proceedings are printed each morning in the *Journal Officiel*. The first tier of seats in the semicircle, facing the tribune, is reserved for the Government, *i.e.*, the members of the ministry; behind are ranged the remaining members of the chamber, with the radicals on the president's left and the conservatives on his right. In order to become law, a measure must pass two readings in each chamber, with an interval of five days, unless otherwise ordered by a majority vote. A member wishing to take part in the debate indicates his desire by inscribing his name on lists kept by the secretaries. On the motion of any member, the closure may be applied and a vote ordered. The division may be taken by a show of hands, by rising, or by a ballot in which a white voting paper denotes an affirmative, and a blue one a negative, vote. No decision is valid unless an absolute majority of the members (151 in the Senate and 314 in the Deputies) has participated in the vote.[1] In the upper branch proceedings are apt to be slow and dignified; in the lower they are more animated, and frequently tempestuous. The duty of keeping order falls to the president. In serious cases he is empowered, with the consent of a majority of the chamber, to administer a reprimand carrying with it temporary exclusion from the deliberations.[2]

[1] Duguit, *Manuel de droit constitutionnel* (2d ed.), 373–375.

[2] For an Englishman's impressions of the conduct of business in the Chamber of Deputies see Bodley, *France*, II, 202–200, 237–245. Cf. P. Hubault, "Le travail parlementaire; comment se fabriquent les lois," in *Rev. Hebdom.*, Nov. 1, 1919, and J. S. Crawford, "A Day in the Chamber of Deputies," in *Gunton's Mag.*, Oct., 1901. The standard history of French parliamentary procedure is J. Poudra et E. Pierre, *Traité pratique de droit parlementaire*, 8 vols. (Versailles, 1878–80). R.

The relations between the two chambers are governed, not by the constitution, nor yet by statutes, but by voluntary usages, inherited to a considerable extent from the bicameral parliament of 1814–48. The fundamental principle is that the chambers are equals in dignity and power, and also in function, except in so far as special functions have been conferred by the constitution or by law upon one or the other.[1] From this it follows that the members of one chamber cannot interfere with the proceedings of the other, and that each chamber can adopt, reject, or amend any measure that comes to it from the other with no less freedom than if the measure had originated within its own walls. In order to become law, a bill must pass both houses in exactly the same form; hence, if it passes in somewhat different form, some means must be employed to bring the houses into agreement. If the measure is a government bill, the ministers in charge of it can readily pass from one chamber to the other, winning a concession here and inducing a surrender there, until at last the differences are ironed out. If, however, the measure has originated in one of the chambers and the ministers feel no particular responsibility for its fate, it is likely to be referred, in the event of a disagreement between the chambers, to a special joint committee, on the analogy of both English and American usage. In point of fact, government bills, too, are sometimes thus referred, a notable example being the military service law of 1889.[2]

The Power of the Purse. — The Revolution introduced a number of principles relating to public finance which, although not specifically reaffirmed in the constitution of 1875, are none the less regarded by most French authorities as integral parts of the law of the land. Among them are: no tax shall be voted except by the people or their representatives; taxes shall be authorized for but one year at a time; public funds shall be expended only with the consent of the nation; the representatives of the people shall every year, with the aid of the government, prepare a plan of expenditures and revenues, *i.e.*, a budget. Some of these principles have found formal expression in statutes enacted since 1875. But in any event they lie at the basis of all

Dickinson, *Summary of the Constitution and Procedure of Foreign Parliaments* (London, 1890), is of some value.

[1] For example, the judicial function of the Senate and the right of the Chamber of Deputies to have the first opportunity to consider finance bills.

[2] Esmein, *Éléments de droit constitutionnel* (4th ed.), 825–833; Y. Guyot, "Relations between the French Senate and Chamber of Deputies," in *Contemp. Rev.*, Feb., 1910.

fiscal operations of the government.[1] The rule that finance bills shall be considered first in the lower chamber was borrowed from England in 1814, and the constitution of 1875 is explicit upon the point.[2] This applies not only to the annual *loi de finances*, or budget, but to special votes of credit, to authorizations of loans, and indeed to fiscal measures of whatsoever character; although it should be added that measures not primarily fiscal, yet entailing expenditure — an old age pension law, for example — sometimes make their first appearance in the Senate. The budget is voted every year for the following year; and, contrary to the practice in England, where many of the important taxes are collected on the basis of permanent laws, and where many expenditures (*e.g.*, interest on the national debt) are similarly authorized for an indefinite period,[3] it is intended to cover all revenues and expenditures whatsoever. It is, furthermore, specific, in that it allocates in detail the anticipated revenues to particular services, leaving the executive and administrative authorities very little discretion in the matter.

The budget is originally prepared by the ministers. Each head of a department, with the aid of his administrative bureaus and offices, draws up the estimates of expenditures for his own department, and the Minister of Finance brings these together in a consolidated budget and, in addition, prepares the estimates of revenues. The fiscal year begins January 1, and the work of budget-making is started in October or November of the second year preceding that for which the budget is intended, *e.g.*, in the autumn of 1920 for the year 1922. When the document is complete (it makes a volume of upwards of three thousand pages) it is submitted to the Chamber of Deputies by the Minister of Finance, and is immediately turned over to the budget committee, a body consisting of forty-four members elected by the eleven bureaus, four from each, nominally for a year, but actually for whatever period may prove necessary for the completion of its duties.[4] Working behind closed doors, the committee studies

[1] There is not full agreement on the point. Thus, Duguit holds that a vote of taxes by Parliament for more than one year at a time would be unconstitutional (*Manuel de droit constitutionnel*, 2d ed., 388), while Esmein takes the contrary view (*Éléments de droit constitutionnel*, 4th ed., 836).

[2] Law of February 24, Art. 8. Dodd, *Modern Constitutions*, I, 290. See Esmein, *Éléments de droit constitutionnel* (4th ed.), 842–857.

[3] See p. 187.

[4] Stourm, *The Budget*, 280. It will be recalled that in England the budget was invariably considered only in committee of the whole until, in 1919, the House of Commons adopted, for a single session, a rule allowing the estimates to be referred to a standing committee. See p. 194.

the estimates, prepares a lengthy report, and finally — after three or four months — writes out the text of a great *loi de finance*, or finance bill, incorporating the revised proposals. Then follows the discussion on the floor of the Chamber, first on the bill as a whole, and afterwards on the several articles considered one by one. There is entire freedom of debate; under certain minor restrictions, members may propose amendments, and the Chamber may make any number or kind of changes. While before the legislature, the budget consequently gets beyond the control of the government in a degree quite impossible in the English system, at all events prior to the adoption by the House of Commons of the new rule of 1919. Furthermore, there is no restraint analogous to the important English rule that no expenditures shall be authorized that are not asked by the executive.[1] The changes made by Parliament are, indeed, more likely to augment the ministerial estimates of expenditure than to diminish them.

As each article is disposed of, a vote on it is taken, and at the end the law is voted upon as a whole. As a rule, the budget is before the Chamber from three to four months after it is received from the committee. Upon its final passage there, the project goes back to the finance minister, who forthwith submits it to the Senate. By this time only a few weeks may remain before the law must take effect, so that consideration by the upper chamber is likely to be hurried. Precisely the same procedure as in the lower chamber is followed, however, and important changes are often introduced. When disagreements arise, the budget goes back and forth between the houses, and conference committees labor to reach an understanding. Only those points that are in dispute are reconsidered; and eventually a full agreement is arrived at. The completed law is published in full in the *Journal Officiel;* and, after being proclaimed by the president, it goes into operation on the first day of the new year. There is no question that the chambers have the power to reject a budget outright. They have never seriously threatened to do so, however, save on one occasion, *i.e.*, at the time of the *Seize Mai* crisis in 1877.[2]

[1] See p. 187.

[2] See p. 445, note 3. The best account of French budget procedure and fiscal legislation, with much comparison with English, American, and other systems, is R. Stourm, *Le budget*, trans. by T. Plazinski as *The Budget* (New York, 1917). For brief accounts, not wholly up to date, see Bodley, *France*, II, 225–233, and Esmein, *Éléments de droit constitutionnel* (4th ed.), 833–857. The accounts of national revenue and expenditure are audited by a *Cour des Comtes* (Court of Accounts), which reports every year to the president and the Chamber of Deputies. Its members are appointed by the president for life. Its work resembles that of the office of Auditor General in Great Britain.

Control over the Government: the Parliamentary System. — The third main function of Parliament is the enforcement of the principle of ministerial responsibility, which at the least means a general watchfulness over the conduct of the executive and administrative officers, and, carried out literally and completely, as it is in France, means the ceaseless supervision of and interference in the routine of administrative work. The nature and effects of this control can best be made clear by some consideration of the workings of the French cabinet, or parliamentary, system.[1] Ostensibly, France has a parliamentary system of government copied from, and substantially like, that of Great Britain. There is a politically irresponsible titulary of the executive power. The actual, working executive consists of the ministers. The ministers are responsible, collectively in general matters and individually in particular ones, to the chambers — mainly to the Chamber of Deputies. When defeated on any important proposition, they resign as a body. The right of dissolution as a means of terminating conflicts between the executive and legislative departments is duly provided for.

In practice, parliamentary government in France means, however, something very different from what it means across the Channel. It presents an appearance such that some observers have been led to apply to it the designation "parliamentary anarchy," its outstanding characteristics being the instability of ministries, the frequency of ministerial crises, and the recurring conflicts between the chambers and the Government. From the middle of the nineteenth century to the outbreak of the Great War in 1914 England had but twelve prime ministers; France had as many between 1900 and 1914. From 1873 to 1914 England had but eleven different ministries; France had fifty. Between 1875 and 1900 only four years passed in the latter country without at least one change of ministry. Only four of the fifty ministries between 1873 and 1914 held power for a longer period than two years, and most of them were in office only a few months, the average tenure for the whole period being, indeed, less than eight months.[2] It is of the essence of parliamentary government that the tenure of the ruling ministry shall be determined entirely by the continuance of good relations with the popular chamber. No ministry, even in England, has any

[1] The term "cabinet system" is most commonly used in England, the term "parliamentary system" in France.

[2] J. W. Garner, "Cabinet Government in France," in *Amer. Polit. Sci. Rev.*, Aug., 1914, pp. 368–369.

definite assurance as to its lifetime. The statistics cited show, however, that in the latter country a ministry has a reasonable expectation of several years in which to carry out its policies. In France, a ministry can be morally certain that it will not last long. Following custom, it begins by issuing a "declaration" setting forth an extensive program of reforms;[1] but it knows in its heart that it will never survive to fulfill any large part of its promises. The work of government tends to become a wearisome succession of starts and stops; great measures hang in the balance for years; politicians of mediocre ability — men who in England would not be considered fit for ministerial posts — troop through the great offices in rapid succession.

Causes of Ministerial Instability. — The reasons why the parliamentary system works so much less smoothly than in England are not difficult to discover. There is, of course, the underlying fact that whereas the system is in the one country a product of long evolution and adaptation, in the other it is an importation, imperfectly understood by those who a century ago brought it in, and never wholly suited to its new environment. Of more specific reasons for the failure of the system to work as in England, the most important is undoubtedly the condition of political parties. Beyond the Channel, while even before 1914 minor political groups had sprung up to complicate the situation, the political life of the nation has been largely confined to two great parties, each of which has had sufficient strength, if raised to power, to support a homogeneous and sympathetic ministry. In France, on the contrary, there is a multiplicity of parties, and no one of them ever finds itself in a position to operate the government alone. The election of 1910 sent to the Chamber of Deputies representatives of not fewer than nine distinct political groups. No ministry can be made up with any hope of being able to command a working majority in the Chamber unless it represents in its membership a coalition of several parties. A government so constituted, however, is almost certain to be vacillating and short-lived. It is unable to please all of the groups and interests upon which it depends; it dares displease none; it commonly ends by displeasing all.

A second cause of ministerial instability is Parliament's insistence upon the exercise of a close and continuous control over the ministers, not only in the shaping of policy, but in matters

[1] There is no ministerial declaration, corresponding to the Speech from the Throne in England, at the opening of a parliamentary session. But a new ministry, whenever it comes in, offers a statement of principle and policy.

of administrative detail. In England, as has been pointed out, the cabinet leads and dominates in both legislation and administration. Parliament holds it to a general responsibility, but in practice allows it free scope, especially on the side of administration.[1] The French parliament is content to play no such passive, trustful rôle. It displays a regrettable eagerness to dictate appointments and promotions, issue orders, and meddle generally in matters that do not properly concern it. "Not content with depriving the chief of state of his constitutional prerogatives and reducing him to the position of a figurehead, the French chambers insist upon throwing the ministers out upon trivial questions, and this notwithstanding the constitutional prescription that they shall be responsible only for their *general* policies." [2]

The position occupied by French ministries is made the more precarious by the device of interpellation. As in the English parliament, every member of the two chambers has the right to put to a minister, in the presence of the chamber, a question designed to elicit information, providing the minister assents. Normally, the question is asked, a reply is given, the author of the question makes a rejoinder if he wishes (though no one else may do so), and the incident passes without debate; at all events, there is no vote. French usage permits, however, another practice, whose consequences extend much farther. This is interpellation. An interpellation is, similarly, a demand for information made by a member or group of members upon a minister. But in this case the consent of the minister is not asked, the demand is reduced to writing, the chamber fixes the day when it shall be put,[3] and debate follows, with motions, serving to bring under challenge the general policy of the ministry, or at all events an act or policy of an individual minister. Frequently information is sought only as a pretext, the real object being to put the Government on the defensive and to maneuver it into a position where it can be defeated and compelled to resign. In short, the interpellation is, as has been stated, a challenge. It becomes the subject of a general debate, and it almost invariably leads to a vote of an "order of the day," which in its simplest form is a vote on the question whether the chamber, "approving the declarations of the Government," shall pass to the considera-

[1] Willoughby, *Government of Modern States*, 237–241; Esmein, *Éléments de droit constitutionnel* (4th ed.), 884–887.

[2] Garner, *loc. cit.*, 366.

[3] Not more than one month distant unless the question relates to foreign affairs.

tion of other subjects that have been made the order for the day.[1] If this vote is affirmative, the ministry has weathered the storm, and nothing happens. But if it is negative, it is tantamount to an expression of want of confidence, and ordinarily there is nothing for the ministers to do save resign. As may be surmised, interpellation is a practice which readily lends itself to abuse, and ministries are often overthrown on mere technicalities or other matters inherently unimportant. The chambers have full power to restrict, or even to abolish, the system by amending their rules. But the right of interpellation is regarded by French authorities as an indispensable means of enforcing ministerial responsibility, and there is reluctance to place limitations upon it. Interpellation, as employed in France, is unknown in England. The statements of a minister in the House of Commons, made in answer to an interrogation, are allowed to become the subject of debate and the occasion of a vote only on request of forty members; and such requests are rarely made.[2]

A final cause of French ministerial instability is the practical ineffectiveness of the constitutional provision for parliamentary dissolutions. The power to dissolve the Chamber of Deputies is formally vested in the president, and would normally be exercised by the ruling cabinet. It is subject, however, to a restriction which has no parallel in England: a dissolution can take place only with the consent of the upper chamber. Furthermore, the dissolution which was carried out in 1877 was so unwise, if not actually unconstitutional, as to bring the practice into lasting disfavor.[3] The consequence is that there has not been a dissolution since that date, and the power is for practical purposes obsolete. The effect of this is obvious. In England, when disagreement arises between the cabinet and Parliament the ministers may resign; but, on the other hand, they may dissolve Parliament, order a general election, win a parliamentary majority, and

[1] For the numerous shades of praise or blame that an order of the day may be made to express see Lowell, *Governments and Parties*, I, 120–121.

[2] See p. 180. Garner, *loc. cit.*, 360–362; Lowell, *Governments and Parties*, I, 119–126; Esmein, *Éléments de droit constitutionnel* (4th ed.), 858–860; Dupriez, *Les ministres*, II, 439–445.

[3] For the circumstances see Bodley, *France*, I, 286–289, and for a fuller account, Hanotaux, *Contemporary France*, III, Chap. ix, IV, Chap. i. President MacMahon, himself a monarchist, arbitrarily dismissed the republican premier, Jules Simon, named the monarchist Duc de Broglie as his successor, and finding the Chamber of Deputies hostile, obtained the consent of the monarchist Senate to a dissolution. In the ensuing national elections the reactionary government systematically employed the methods used by Napoleon III to obtain a legislative majority. The new Chamber was, however, republican, and the formation of a republican cabinet by Dufaure brought the *Seize Mai* crisis to an end.

remain at the helm. This is precisely what happened at the two national elections of 1910. But in France, it is the ministry that must give way in any conflict with Parliament; dissolution is, practically, not available as a mode of ministerial vindication. In other words, the ministry is responsible to Parliament alone and not to the nation; it cannot appeal over the head of Parliament to the electorate, or ask the people to sustain it by electing a parliament of a different complexion. As has been explained, development in England has been of precisely the opposite sort. There, unless the circumstances are very unusual, the ministry refuses to yield to an adverse parliamentary majority unless the people back up that majority at the polls.[1]

Elements of Continuity and Stability. — "The chronic inability of the French to produce the two-party system," says an English writer, "is in itself a sure sign of their incapacity for parliamentary government."[2] This judgment is much too drastic. Failure to develop a two-party system (and there is no indication that such a system will arise) unquestionably means that France cannot have parliamentary government *of the English type*. It may very well mean that her government must continue to be in some respects inferior to the English. But it does not mean that the French system is impossible, objectionable, or inefficient, or that it is not entitled to be called "parliamentary government." In point of fact, French government is exceptionally democratic, economical, and effective. It is also far more stable and continuous than might be inferred from the kaleidoscopic succession of ministries; and this for two main reasons. In the first place, in each executive department there is, as in England, a corps of highly trained officials who carry on the actual work of administration and who do not change with the rise and fall of their chiefs. In the second place, a ministerial "crisis" involves as a rule no very great upset. Defeated in the Chamber of Deputies, or unable to make progress, a ministry as a body resigns. But many of the members will probably be immediately reappointed, with perhaps an exchange of portfolios. In England a change of ministry usually means not only a new personnel throughout, but a general shift of policy. In France many familiar faces reappear, and the change of policy is apt to be microscopic. In her own way — which is

[1] On the general subject of the control over the ministers by the chambers in France see Dupriez, *Les ministres*, II, 432-461; Esmein, *Éléments de droit constitutionnel* (4th ed.), 857-884; and Poudra et Pierre, *Traité pratique de droit parlementaire*, VII, Chap. iv.

[2] Bodley, *France*, II, 176.

not necessarily the best way, but the only way *for her*, considering the conditions — France contrives to get most of the great advantages of parliamentary government. If the political surface seems unduly ruffled, it is only the ripples that reach the eye; the current runs deep and steady beneath.[1]

[1] For varying estimates of the French parliamentary system see Bodley, *France*, II, Chap. v; Lowell, *Governments and Parties*, I, 127–137; and E. S. Bradford, *The Lesson of Popular Government* (New York, 1899), I, Chap. xv. See also Dupriez, *Les ministres*, II, 373–461; L. Duguit, "Le functionnement du régime parlementaire en France," in *Rev. Polit. et Parl.*, Aug., 1900; C. Benoist, "Parlements et parlementarisme," in *Rev. des Deux Mondes*, Aug. 1, 1900; *ibid.*, *La réforme parlementaire* (Paris, 1902); J. Barthélemy, *L'introduction du régime parlementaire en France* (Paris, 1904); F. Moreau, *Pour le régime parlementaire* (Paris, 1903), and H. Leyret, *Le gouvernement et le parlement* (Paris, 1919). An interesting piece of reading in this connection is J. T. Shotwell, "The Political Capacity of the French," in *Polit. Sci. Quar.*, Mar., 1909.

CHAPTER XXV

LAW AND JUSTICE

Legal Origins. — The law of France, like that of England, is deeply rooted in the past and includes elements drawn from many sources. Considerable parts of it are strictly modern, having sprung from the legislation of the successive national assemblies between 1789 and the present day. But other important parts represent codifications of legal principles and rules whose origins are traceable to the Middle Ages, or even to a remoter antiquity. Aside from certain contributions from the canon law, French law in medieval and earlier modern times consisted chiefly of (1) survivals of Roman law; (2) local *coutumes*, or "customs"; and (3) royal legislation. Roman law, which under the later Empire was extended over the whole of Gaul, was neither entirely superseded nor forgotten because of the Germanic occupation; and in the eleventh and twelfth centuries it underwent, especially in the south, a notable revival. From this time dates the division of the kingdom into the southern *pays de droit écrit* ("land of the written law"), in which Roman law, as codified by Justinian, was received as the ordinary law, and the northern *pays de coutume* ("land of customary law"), where the Roman law was far outweighed by custom. As late as the sixteenth century fresh influences of the Roman law, in such fields as contracts and obligations, were powerfully exerted on the development of legal usage throughout the country, even in the north.

Customary law sprang partly from old Germanic practices, partly from feudal usage, partly from the decisions of a wide variety of public and private courts. It was local law; for although the *coutumes* of the petty jurisdictions tended to merge into bodies of law having force throughout large regions, this development never went so far as to bring about substantial uniformity of law over the kingdom as a whole. The English common law — which also was the product of custom — found in France no analogy;[1] Voltaire could still say at the middle of the eighteenth century that a traveler in France had to change

[1] See pp. 207–209.

laws about as often as he changed horses. Originally, the customary law was unwritten. Jurists, however, occasionally made collections, called *livres coutumiers*, and judges' clerks sometimes compiled registers of notable decisions. By the sixteenth century the "general" customs of the provinces and districts of the *pays coutumiers* were, in most cases, formally recorded. Their codification became, indeed, a matter of official action. Drafts prepared by the king's judicial agents in the districts were submitted to the government, referred back to specially constituted local assemblies, and finally proclaimed by royal commissions; and the texts could thenceforth be altered only by the same procedure.

Royal legislation took the form of *édits*, *déclarations*, or *ordonnances*, which were sometimes applicable to the entire country, sometimes only to specified sections. The *grandes ordonnances* of the fourteenth, fifteenth, and sixteenth centuries were commonly promulgated after sessions of the Estates General and, being drawn up with a view to meeting the suggestions of the deputies, were likely to embrace a good deal of new law, or at least to make important changes in the old laws. From 1614 to 1789 the Estates General was, however, never convened, and in this period the *ordonnances* oftener took the form of a codification of a particular branch of law. Under Colbert's direction, in the reign of Louis XIV, a code of civil procedure was issued in 1667, a forest code in 1669, a code of criminal procedure in 1670, a code of commerce on land in 1673, and a code of commerce on the sea in 1681. Similarly, at the instigation of the chancellor d'Aguesseau, in the reign of Louis XV, codes were issued relating to wills, property left in trust, and other matters.[1]

The Great Codes. — The Revolution was an event of the first magnitude in the history of French law, for two principal reasons. In the first place, the successive assemblies revised or abrogated a very large part of the existing law, and enacted great masses of new and uniform law, on marriage and divorce, on inheritance, on land tenure, on criminal procedure, and on many other subjects. In the second place, the Constituent Assembly and the Convention undertook, although they were not able to carry far, the codification or recodification, of the whole body of French law, old and new, civil and criminal. In 1791 the Constituent Assembly gave the country its first penal code; four years later the Convention gave it a new code of criminal procedure. The greatest need was a code of civil law, which should bring together the

[1] Ilbert, *Legislative Methods and Forms*, 8–15.

best that was in the regional systems, fuse it with the new legislation, and thus furnish a nation-wide and uniform legal system. Such a code was earnestly demanded in the *cahiers* of 1789 and was definitely promised in the constitution of 1791.

Some steps in this direction were taken by the first two Revolutionary assemblies, but the development of a coherent plan began only in the Convention, in 1793.[1] In the period of the Consulate (1799–1804) the task was continued and progress was rapid. The drafting of the code was intrusted to a special commission, appointed by the First Consul, Napoleon; and the final decision of difficult or controverted questions fell to the Council of State, over whose deliberations Napoleon frequently presided in person. On March 31, 1804 — less than two months before the Empire was proclaimed — the new *Code Civil des Français* was promulgated in its entirety.[2]

In arrangement the Code resembles the Institutes of Justinian, and also Blackstone's *Commentaries;* in content it represents a very successful combination of the two great elements with which the framers had to deal, *i.e.*, the ancient heterogeneous law of the French provinces and the new uniform law which flowed from the deliberations of the Revolutionary assemblies. Napoleon justly regarded the Civil Code as the chief glory of his reign.

With the progress of time certain defects appeared, and since the middle of the nineteenth century the Code has been repeatedly amended and expanded, although it remains essentially the same in principle as when it left the hands of its framers. The last important revision was worked out by an extra-parliamentary commission created at the celebration of the Code's centennial in 1904. In the main, the faults to be corrected were such as had sprung from the development of new interests and conditions, notably in the domain of industry and labor.[3] As a great scientifically organized body of law, the Code has had world-wide influence. In Belgium, which received it when the country formed a part of the Greater France of Napoleonic times, it survives practically intact. The Rhine Provinces of Germany abandoned it only on the promulgation of the civil

[1] H. Cauvière, *L'idée de codification en France avant la rédaction du Code Civil* (Paris, 1911).

[2] In 1807 the instrument was renamed the *Code Napoléon*. The original designation was restored in 1818, the amended name again in 1852. Since 1870 the official name has been *Code Civil*.

[3] See *La Code Civil, livre du centenaire* (Paris, 1904) — a volume of valuable essays by French and foreign lawyers. Cf. M. Leroy, "Le centenaire du code pénal," in *Rev. de Paris*, Feb. 1, 1911.

code of the German Empire in 1900.[1] The civil law of the Netherlands, Italy, Spain, Portugal, and most of the Latin-American states is modeled upon it.

Aside from the revised Civil Code of 1804, containing a total of 2281 articles, the private law of France to-day is to be found mainly in four great codes, which in their original form also date from the era of the Consulate and the Empire. These are: (1) the Code of Civil Procedure, in 1042 articles, promulgated in 1806, and based largely on the *grand ordonnance* of 1667; (2) the Code of Commerce, in 648 articles, issued in 1907, and practically a revision of the *ordonnances* of 1673 and 1681; (3) the Code of Criminal Procedure, in 648 articles, promulgated in 1808, and retaining many of the forms of the *ordonnance* of 1670 and other earlier laws, although introducing much new procedure and ameliorating the harshness of the old system; and (4) the Penal Code, in 484 articles, issued in 1810, and substituting for the old scheme of fixed penalties maxima and minima for the guidance of judges in the exercise of their discretion.[2] The last two codes, together with that part of the Code of Commerce relating to bankruptcy, were revised in 1832; and during the Second Empire all parts of the criminal and penal law were remodeled with a view to bringing them into accord with the most advanced and humane principles of jurisprudence. Thus, laws of 1863 introduced a simple and rapid procedure, taken over from the English police courts, for courts of summary jurisdiction, and altered the Penal Code so as to lighten many penalties and reclassify certain crimes as misdemeanors. Since 1871 many other notable changes in criminal law and procedure have been made, including a very desirable alteration in 1897 of the form of the preliminary examination before the *juge d'instruction;* indeed, one may say that these branches of law have been completely recast.[3]

Except on the side of criminal law and procedure, the changes made in the codes since Napoleon's day have hardly extended beyond details, or, at the most, the addition of subjects not originally covered. No one of the codes ever comprised a wholly, or even mainly, new body of law. On the contrary, all of them, and especially the Civil Code, merely reduced existing law to systematic, written form, introducing order and uniformity

[1] See p. 652.

[2] Among minor, supplementary codes may be mentioned the Forest Code, in 226 articles, promulgated in 1827.

[3] These changes are described in D. Garrand, *Traité théoretique et pratique du droit pénal français* (3d ed., Mayenne, 1915).

where there had been diversity, and even chaos. The law of the country thus acquired unity and precision such as it had never had, with the disadvantage, however, that it lost something of the flexibility and dynamic vigor that had once characterized it. Throughout the past hundred years the whole of France has been a country of one written law — a law so comprehensive in both principles and details that, until the great economic and social transformations of recent times, there seemed to be little reason for changing it. As has been pointed out, this completeness of the country's law has considerably narrowed the field of legislation, and has accordingly lessened the labors and achievements of the parliament of the Third Republic.[1]

The Judicial System: General Aspects. — No part of the French governmental system called more loudly for reform when the Estates General convened in 1789 than the judiciary. In its structure, the judicial establishment was largely of medieval origin. Seigniorial and ecclesiastical courts survived to some extent, but their jurisdiction was limited and, in the main, the field was occupied by tribunals directly authorized by and responsible to the king. The most important of the royal courts was the Parlement of Paris, developed out of the *curia regis* in the twelfth and thirteenth centuries, and, through its several chambers, or branches, serving as the highest court of appeal.[2] About a dozen provinces had *parlements* of their own which had arisen on the model of the central *parlement*. In addition, there were large numbers of special or local courts, of which many bore no logical relation one to another or to the system as a whole. *Procureurs du roi* represented the king in the courts, whether as plaintiff or defendant, and were in general responsible for seeing that the law — whatever it was in the

[1] The best brief treatise on French law is J. Brissaud, *Cours d'histoire générale du droit français public et privé* (Paris, 1904). The portions relating to private law, trans. by R. Howell, have been published under the title *History of French Private Law* (Boston, 1912). This work, however, treats the law subject by subject, without presenting a compact survey of the development or character of the law in general. More useful, therefore, to the American student is A. W. Spencer [ed.], *Modern French Legal Philosophy* (Boston, 1916), which consists of translated selections from the writings of Duguit, Fouillée, Demogue, and other leading French writers on legal subjects. A textbook on the civil law is A. Colin and H. Capitant, *Cours élémentaire de droit civil français* (Paris, 1916), and the development of the criminal law is adequately described in C. L. von Bar, *History of Continental Criminal Law*, trans. by T. S. Bell (Boston, 1916). An important book is L. Duguit, *Les transformations générales du droit privé depuis le code Napoléon* (Paris, 1912), trans. by L. B. Register under the title *Evolution of Private Law in the Nineteenth Century* (Boston, 1918).

[2] E. Glasson, *Le Parlement de Paris; son rôle politique depuis le règne de Charles VII jusqu'à la révolution*, 2 vols. (Paris, 1901).

given locality — was duly applied. The level of judicial efficiency and integrity was not high. Judgeships and other positions were often disposed of by the government to the highest bidder; some became hereditary; occasionally the offices were sold by the holders themselves to their successors. Having paid well for their positions, the judges were prone to recoup themselves by accepting gifts, often in money, from parties to suits.

The Constituent Assembly decided on a complete reorganization of the judicial system, which was carried out on such simple and scientific lines that few structural changes have since been necessary. Copying from England, it established in every canton a *juge de paix*, or justice of the peace. In each *arrondissement*, or district, it set up a civil court composed of five judges. In each department a criminal court, consisting of judges drawn from the district courts, was to judge crimes with the assistance of a jury. Finally, a court of cassation at the capital was to hear appeals on questions of law and to use its influence to preserve the new unity of jurisprudence. All judges were to be elected for a term of years; and ample safeguards were set up against bribery and other forms of misconduct on the bench. Under the First Empire the elective principle was set aside in favor of appointment by the central government, and the separate criminal tribunals were abolished. Otherwise, the system survives to-day practically as first created.

Three or four general features of the judicial establishment call for comment before the courts are named or their workings described. The first is the fact that — aside from a provision that the Senate may be constituted a high court of justice for the trial of impeachment cases and of cases involving attempts on the safety of the state — the judiciary is not mentioned in the written constitution, and, therefore, rests entirely upon statute. This is the more remarkable inasmuch as earlier French constitutions usually devoted a separate chapter or title to the subject. Why the omission was made in 1875, and what significance is to be attached to it, are questions upon which French lawyers and publicists are disagreed. But certain facts are clear: first, that it has been not at all unusual in continental countries to make no provision for the judiciary in the written constitution; second, that many people, in France as elsewhere, still preferred to think of the judiciary as a branch of the executive power;[1] and third, that the peculiar circumstances under

[1] Many French writers still take this view. See H. Berthélemy, *Traité de droit administratif* (4th ed., Paris, 1906), 11.

which the constitutional laws of 1875 were framed inclined the Assembly to confine its labors to legislative and executive organization. Had the judicial establishment been provided for in the constitution, it might have been more independent than it now is; it might even have assumed the right to declare unconstitutional acts of the legislature null and void.[1]

A second feature is the maintenance of two entirely separate sets of tribunals, one for the trial of ordinary civil and criminal cases, the other for the handling of controversies between the administrative authorities and private individuals. Although common enough on the European continent, no such cleavage exists in the judicial systems of the English-speaking world.[2] A third feature is the "unity of civil and criminal justice," which means that, although the rules of procedure differ, civil actions and criminal cases are heard and determined by the same courts, not — as commonly in England and the United States — by separate tribunals; although it is but fair to add that the superior courts are, as a rule, divided into civil and criminal chambers. A fourth characteristic is the stationariness of the courts. The English and American system of circuit judges has never been adopted in France,[3] although warmly advocated both at the close of the eighteenth century and again within the past decade. Each tribunal sits at a specified place, and only there.

Finally may be mentioned the fact that all French courts except those held by the justices of the peace are collegial in organization; they are composed of several judges, and — again excepting the justices' courts — no judgment is valid unless concurred in by at least three members. English and

[1] J. W. Garner, "The French Judiciary," in *Yale Law Journal*, Mar., 1917, p. 349. The rule that the judges shall not enter into the question of the constitutionality of statutes has been scrupulously observed since 1833, when the Court of Cassation definitely rejected the plea of a journalist against a statute of 1830 based on the argument that the statute was unconstitutional. None the less, it is to be noted that an increasing number of French writers on legal subjects hold that if a statute violates the constitution the courts cannot apply it; and it may be added that the principle of judicial review, already fully accepted in Norway, Rumania, and one or two other states, is making headway on the continent. See L. Duguit, *Law in the Modern State*, trans. by F. and H. Laski (New York, 1920), 89–93. It is M. Duguit's opinion that "if European jurisprudence does not yet admit that a court can annul a statute for violating a superior rule of law, it very clearly tends to admit the plea of unconstitutionality to any interested party"; and he adds that French jurisprudence "will certainly be led by sheer force of facts to this conclusion." For an excellent brief discussion of the subject see J. W. Garner, "Judicial Control of Administrative and Legislative Acts in France," in *Amer. Polit. Sci. Rev.*, Nov., 1915, pp. 657–665.

[2] The administrative courts are described below. See p. 460.

[3] There is just a trace of it in the courts of assize. See p. 458.

American judicial systems trust very weighty business to the wisdom and discretion of a single judge. But to the Frenchman this seems dangerous; *pluralité des juges* has been a fixed rule; *juge unique, juge inique*, a proverb. Bills providing that all courts of first instance should be held by a single judge have been introduced in Parliament, but have never won much support.[1] The body of judicial officers in France is extraordinarily large, and for thirty years judicial reformers and writers have urged that it be reduced. Various objections have always frustrated the reform, and one of the most serious has been unwillingness to give up the collegial principle.[2]

Appointment and Tenure of Judges. — As has been explained, the Revolutionary reformers, in 1790, provided that all judges should be elected by the people, as they commonly are in our American states. Experience proved, however, that popular election has certain drawbacks, especially the indifference of the voters and the danger that the judges will be drawn into politics; hence it became the plan to have the judges appointed by the executive power, but protected against arbitrary removal by a guarantee of tenure during good behavior. Napoleon abolished the last remnant of the electoral system in 1804, and appointment by the executive has continued without interruption to the present time. "Thus," says an ex-president of France, "saved from any dangers of a forcible dismissal, having no reason to fear disgrace or arbitrary action, they have a greater liberty of judging according to their consciences the causes which are submitted to them." [3] At various times movements for the revival of the elective principle have won considerable support, and in 1883 the Chamber of Deputies passed a bill providing for the change. This measure was promptly reconsidered, however, and interest in the subject has of late almost disappeared. "The fact that popular election works well in Switzerland and the United States," says a leading French authority, "is no argument for introducing it in France. The French have neither the wise toleration of the Swiss nor the practical spirit of the Americans. We pass easily from one extreme to the other, and we often despair of institutions and men to whom we have accorded the greatest confidence." [4]

All judges attached to the ordinary tribunals are appointed

[1] *E.g.*, by Cruppi in 1907 and Viviani in 1915.
[2] Garner, "The French Judiciary," in *Yale Law Jour.*, Mar., 1917, p. 358.
[3] Poincaré, *How France is Governed*, 235.
[4] Marchand, *Le recrutement de la magistrature en France*, 95.

to-day by the president of the republic, on the recommendation, and under the responsibility, of the Minister of Justice, and (with some exceptions) from candidates who have passed a searching examination. With the exception of justices of the peace in France, and of judges of all grades in Algeria and the colonies, tenure of judicial office continues during good behavior; and, outside of the classes mentioned, no judicial officer may be dismissed without the consent of the Court of Cassation. There is, however, an age limit, varying with the official grade, at which retirement is expected and virtually required. Justices of the peace and Algerian and colonial judges may be dismissed by the supreme executive authority independently. Salaries are extremely low, ranging from 1600 francs per year for the justice of the peace to 30,000 for the president of the Court of Cassation. It hardly need be added that a judge who should accept any money or other gift from a litigant would expose himself to heavy penalties; and it is the universal testimony that the judiciary as a body is remarkable for its integrity and incorruptibility. Indeed, notwithstanding the low pay, the uncertainty of promotion, and the opportunity for politics to enter into appointments, the French judges and courts compare favorably in independence, ability, and impartiality with those of any other country.[1]

The Ordinary Courts. — It has been stated that France has two sets of courts — the ordinary and the administrative — each of which maintains practically exclusive jurisdiction within an independent field. The ordinary courts comprise civil and criminal tribunals, together with certain special tribunals, such as the *tribunaux de commerce*. At the bottom stands the court of the *juge de paix*, or justice of the peace, of the canton. This tribunal was created in 1790 and has existed continuously to the present day. The justice of the peace takes cognizance of disputes where the amount involved does not exceed 600 francs,

[1] Garner, "The French Judiciary," in *Yale Law Jour.*, Mar., 1917, contains an exceedingly lucid and well-informed account of the judicial establishment. Cf. the same author's "Criminal Procedure in France," in *Yale Law Jour.*, Feb., 1916, and "Judicial Control of Administrative and Legislative Acts," in *Amer. Polit. Sci. Rev.*, Nov., 1915. A popular sketch is L. Irwell, "The Judicial System of France," in *Green Bag*, Nov., 1902, and attention may be called to P. Fuller, "The French Bar," in *Yale Law Jour.*, Dec., 1913, and F. Allain, "Trials in the Courts of France," in *Bench and Bar*, Feb., 1910. The monumental work on criminal procedure is A. Esmein, *Histoire de la procédure criminelle en France et spécialement de la procédure inquisitoire depuis le xiiie siècle jusqu'à nos jours* (Paris, 1881), of which large portions are translated by J. Simpson under the title *History of Continental Criminal Procedure with Special Reference to France* (Boston, 1913). For other references see p. 458.

and of violations of law punishable by a fine not exceeding fifteen francs or imprisonment not beyond five days. In civil cases involving more than 300 francs, and in criminal cases involving imprisonment or a fine exceeding five francs, appeal lies to the next higher tribunal, the "court of first instance." It should be added, however, that the oldest, and perhaps still the most important, function of the justice of the peace is to *prevent* lawsuits rather than to hear them. He is expected to persuade the parties appearing before him, if he can, to accept a friendly settlement; and inasmuch as they are often his own neighbors, he is not unlikely, if he is a man of tact and probity, to succeed in this somewhat delicate undertaking.

Next above the court of the justice of the peace stands the *tribunal de première instance*, or *tribunal d'arrondissement*. Of such courts there is, with a few exceptions, one in each *arrondissement*, or district. Each consists of a president, at least one vice-president, and a variable number of judges, of whom three form a court with full powers. To each is attached a *procureur*, or public prosecutor. This tribunal takes cognizance of all kinds of civil cases. In appeals from the justices of the peace, actions relating to personal property to the value of 1500 francs, actions relating to land to the value of sixty francs per year, and all cases of registration, there is no appeal from its decisions. The jurisdiction of the court in penal cases extends to all offenses of the class known as *délits* (misdemeanors), *i.e.*, offenses involving penalties heavier than those attached to the wrongful acts dealt with by the justices of the peace, yet less serious than those prescribed for crimes. When sitting as a criminal court, the court of first instance is known as a *tribunal correctionnel*, or "correctional court." All of its judgments in criminal cases are subject to appeal.

Above the courts of first instance are twenty-five *cours d'appel*, or courts of appeal, each of which exercises jurisdiction within a region consisting of from one to five departments. At the head is a president, and each maintains an elaborate *parquet*, or permanent staff of officials, in which are included several *procureurs-généraux* and *avocats-généraux*. For the transaction of business the court of appeal is divided into chambers, or sections, each consisting of a president and four *conseillers*, or judges. The principal function of the court is the hearing of appeals, in both civil and criminal causes, from the courts of first instance. Original jurisdiction is limited and incidental. The decisions of the court are known as *arrêts*.

Closely related to the courts of appeal are the *cours d'assises*, or courts of assize. These are not separate or permanent tribunals. Every three months there is set up in each department, ordinarily in the chief town, a court of assize consisting of a specially designated member of the court of appeals within whose jurisdiction the department lies and two other magistrates, who may be chosen either from the remaining *conseillers* of the court of appeals or from the justices of the local court of first instance. The courts of assize are exclusively occupied with serious offenses, such as are classified in the Penal Code as crimes. In them, and in them only among French tribunals, is a jury regularly employed. A jury consists of twelve men, whose verdict is rendered by simple majority. As in Great Britain and the United States, the jurors determine the fact but do not apply the law. Cases are normally tried, and all sentences must be pronounced, in open court. Not only are the courts open to all; the state, since 1851, has provided means whereby the poor may obtain legal assistance in establishing their rights at law.

At the apex of the hierarchy of ordinary tribunals is the Court of Cassation, created in 1790. This court sits at Paris, and in all matters of ordinary private law it is the supreme tribunal of the state. It consists of a first president, three sectional presidents, and forty-five judges. Attached to it are a procurator-general and six advocates-general. For working purposes it is divided into three sections: the *Chambre des Requêtes*, or Court of Petitions, which gives civil cases a preliminary hearing; the Civil Court, which gives them a final consideration; and the Criminal Court, which disposes of criminal cases on appeal. The Court of Cassation can review the decisions of any tribunal in the country, save those of an administrative character. It passes not upon fact, but upon the principles of law involved and upon the competence of the court rendering the original decision. A decision which is overruled is said to be *cassé*, *i.e.*, quashed. No substitute decision is offered; rather, the case, with a statement of the law, is referred back to a tribunal of the same grade as that whose action has been annulled. The pronouncements of the Court have much weight with the judges at large, and they have the important effect of establishing a common basis of action in cases of an analogous character. The tribunal thus not only furthers the interests of justice, but aids in preserving and developing the unity of French jurisprudence.[1]

[1] The best general work on the French judicial system and on proposed reforms of it is J. Coumoul, *Traité du pouvoir judiciaire; de son rôle constitutionnel et de sa*

Administrative Law and Administrative Tribunals. — Under all forms of government the dealings of the administrative officers with private citizens give rise to innumerable disputes. A policeman or other representative of the government quarantines a citizen's house and keeps him from his business, suppresses a newspaper alleged to be seditious, or runs down an innocent person while in pursuit of an offender, and the citizen claims redress. The individual officer, or the government he represents, may or may not be liable, and the compensation that can be obtained may be much or little, or nothing, according as the rules of administrative law prescribe or allow. Administrative law may be briefly defined as the body of legal principles by which are determined the status and liabilities of public officials, the rights of private citizens as against these officials, and the procedure by which these rights and liabilities may be enforced.[1] The idea underlying it is that the government, and every agent of the government, has rights, privileges, and prerogatives differing from those of the private citizen, and that the nature and extent of these rights and privileges are to be determined on principles essentially distinct from those that govern in fixing the rights and privileges of citizens in relation one to another. All civilized states have more or less elaborate systems of administrative law, springing partly from legislation, partly from court decisions.

In English-speaking countries it has always been assumed that the best way to protect the individual against administrative acts that are *ultra vires*, or otherwise wrongful, is to give broad powers and strong organization to the ordinary courts of justice. Most peoples whose jurisprudence is based on the Roman Law have solved the problem in a different way, namely, by setting up a separate system of courts charged with the handling of cases of an administrative nature, and by placing these courts, not under the Ministry of Justice, but under the

réforme organique (2d ed., Paris, 1911). The problems of personnel are fully considered in M. Dehesdin, *Le recrutement et l'avancement des magistrats* (Paris, 1908). The judicial system is severely criticized on the ground of lack of initiative and independence in É. Faguet, *The Dread of Responsibility*, trans. by E. J. Putnam (New York, 1914). But the charges are not borne out by the facts. See the reply contained in W. Loubat, "Les idées de M. Émile Faguet sur la justice moderne," in *Rev. Polit. et Parl.*, May, 1912, and in comment by Garner in *Amer. Polit. Sci. Rev.*, May, 1915, p. 400. Reform proposals are discussed in A. Tissier, "Le projet de réforme judiciaire," in *Rev. Polit. et Parl.*, June, 1916; Demombynes, "La réforme judiciaire," *ibid.*, July, 1918; and J. Appleton, "La réforme judiciaire," in *Grand Rev.*, Aug., 1919.

[1] Cf. Goodnow, *Comparative Administrative Law*, I, 8–9.

Ministry of the Interior. Under this plan all administrative matters, including matters of controversy, are determined by the administration itself; and the ordinary courts must in no wise interfere in the administration, not even by adjudicating suits that arise between it and individuals. Nowhere do administrative courts play a more important rôle than in France. It is true that the theory of *contentieux administratif*, or administrative jurisdiction, as it was originated in France about 1790, was founded on the desire of the Revolutionists to free the administrative authorities from the control of the judicial tribunals, which were suspected of hostility to the new reforms,[1] and that, therefore, the system was designed in the interest rather of the government than of the citizen. It is true, too, that in France nowadays, as an American writer puts it, "there is one law for the citizen and another for the public official, and thus the executive is really independent of the judiciary, for the government has always a free hand, and can violate the law if it wants to do so without having anything to fear from the ordinary courts."[2] But it is also true that the original purpose has become obscured, and that the administrative tribunals have as their primary object to-day the protection of the individual against arbitrary or illegal administrative acts.

The present system of administrative courts dates largely from the Napoleonic period. The court of first instance in all litigation arising out of the application of administrative law is the *conseil de préfecture*, or prefectural council, established in 1799. One such council exists in every department, under the presidency of the prefect. The prefectural council is to be carefully distinguished from the departmental *conseil générale*, or general council.[3] The latter is elected by the voters of the department and is primarily an ordinance-making body; the former is appointed by the president of the republic and, in addition to adjudicating administrative disputes, advises the prefect on executive and administrative matters. In point of fact, the prefect largely controls the administrative decisions.

Above the prefectural councils stands the *Conseil d'État*, or Council of State, created also in 1799, with large powers, including the "adjustment of such difficulties as arise in administrative matters." The earlier legislative functions of this body have been taken away, and the Council of State as a court has

[1] Garner, "The French Judiciary," in *Yale Law Jour.*, Mar., 1917, pp. 350–351.
[2] Lowell, *Governments and Parties in Continental Europe*, I, 58.
[3] See p. 473.

been sharply differentiated from the Council which survives as an administrative body.[1] The former is a supreme common law tribunal for the adjudication of administrative disputes. It is composed of 35 councilors *en service ordinaire*, 21 councilors *en service extraordinaire* (government officials deputed to guard the interests of the various executive departments), 37 *maîtres des requêtes*, and 40 auditors.[2] Members are appointed by executive decree, with the advice and consent of the council of ministers, and they can be removed only in the same manner. The Council is required to consider and make reply to all questions relating to administrative affairs which the government submits to it; and in all administrative cases at law it is, as has been stated, the court of last resort.[3]

As it has worked out in the past half century, there is a great deal to be said for the French system of administrative courts. The rights of the individual are adequately protected in England under a different plan, but it can at least be argued that under the French system an individual can obtain redress in many cases where he cannot do so in England, and that (with numerous exceptions) courts composed of administrative officials are better fitted to deal with the law governing administrative questions than are the ordinary courts.[4] It is obviously possible for the government to bring much pressure to bear on the administrative courts; they are, indeed, part of the government, and controllable through the Ministry of the Interior. The temptation might, indeed, be strong if the matter in controversy had a political bearing. Experience, however, shows that the administrative courts preserve a high degree of independence, that the government does not seek to extort favorable decisions, and that as often as not the decisions are against the government and in favor of the private litigant. The Council of State, says a

[1] See p. 400.

[2] These numbers are changed slightly from time to time.

[3] The earlier history of the Council of State is fully presented in E. J. Laferrière, *Traité de la jurisdiction administrative et des recours contentieux* (Paris, 1887), I, 137–301. On the organization and work of the Council see Berthélemy, *Traité élémentaire de droit administratif*, 122–128; and Hauriou, *Précis de droit administratif* (8th ed.), 229 f, 968 f; and especially J. W. Garner, "Judicial Control of Administrative and Legislative Acts in France," in *Amer. Polit. Sci. Rev.*, Nov., 1915, and G. Jèze, "Le conseil d'état au contentieux," in *Rev. Droit Pub. et Sci. Polit.*, Oct.–Dec., 1918. Proposed changes are considered in Varagnac, "Le Conseil d'État et les projets de réforme," in *Rev. des Deux Mondes*, Aug. 15 and Sept. 15, 1892; P. de Pressac, "Le conseil d'état et les innovations necessaires, in *Rev. Gén. d'Admin.*, May–June, 1919; and Duguit, *Law in the Modern State*, Chap. v.

[4] These matters are briefly discussed in Lowell, *Government of England*, II. 501–504.

principal French authority, "has been working out a body of case law which affords to the individual almost perfect protection against arbitrary administrative action — a higher degree of protection, I think I may affirm, than in any other country."[1] Under the Orleanist monarchy and the Second Empire, the Liberals urged the abolishment of administrative jurisdiction. But after a reorganization of the Council of State upon a strictly judicial basis in 1872 the movement waned. Confidence in the independence and fairness of the administrative courts has steadily increased, and of late the people prefer to submit their complaints directly to these tribunals in cases in which at an earlier time they would have applied to the ordinary courts.

Numerous disputes arise in which it is not clear whether jurisdiction belongs to the one kind of tribunals or to the other; besides, it is desirable to have some authority to act as a check upon the government in the event that it should seek to force cases into the administrative courts. Hence, in 1872 a *Tribunal des Conflits*, or Court of Conflicts, was created, consisting of the Minister of Justice as *ex-officio* president, three judges of the Court of Cassation elected by their colleagues, three members of the Council of State elected by the Council itself, and two judges chosen by the foregoing members. All conflicts of authority between the administrative tribunals and the judicial tribunals are determined by this body; and, being a part neither of the ordinary judicial organization nor of the administrative system, it fulfills the function with a high degree of impartiality and success.[2]

[1] L. Duguit, "The French Administrative Courts," in *Polit. Sci. Quar.*, Sept. 1914, p. 393.

[2] Brief accounts of the French administrative courts will be found in Lowell, *Government of England*, II, 494–504; Duguit, "The French Administrative Courts," in *Polit. Sci. Quar.*, Sept., 1914; and F. P. Walton, "The French Administrative Courts and the Modern French Law as to the Responsibility of the State for the Faults of its Officials," in *Ill. Law Rev.*, Oct.–Nov., 1918. See also J. W. Garner, "Judicial Control of Administrative and Legislative Acts in France," in *Amer. Polit. Sci. Rev.*, Nov., 1915. The nature of administrative acts, the field of administrative law, and the numerous problems arising from the French system of administrative jurisdiction are freshly and lucidly surveyed in Duguit, *Law in the Modern State*. There is a good brief discussion in Ashley, *Local and Central Government*, Chap. viii. Berthélemy, *Traité élémentaire de droit administratif*, Jèze, *Principes généraux du droit administratif*, and Laferrière, *Traité de la jurisdiction administrative* remain the standard French treatises. See Garner's review of Jèze's second edition, in *Amer. Polit. Sci. Rev.*, Aug., 1915, pp. 608–612. Misconceiving the nature of the French administrative tribunals, the English scholar Dicey passed severe and unjust judgment upon them in the earlier editions of his *Law and Custom of the Constitution*. For his later and fairer views see the preface to the 8th edition (1915).

The Senate as a High Court of Justice. — It has been pointed out that the House of Lords caps the British judicial system, being not only (at least theoretically) a tribunal for the trial of peers and peeresses, but the highest court of appeal in all judicial actions except such as come up from the ecclesiastical or the colonial courts. On the continent, too, second chambers are usually endowed with judicial powers, although there the appellate feature rarely appears and the chamber is made rather a sole, extraordinary tribunal for the trial of certain kinds of cases, mainly political, or cases affecting certain classes of people. The French constitution of 1875 provides that " the Senate may be constituted a court of justice to try the president of the republic or the ministers, and to take cognizance of attempts on the safety of the state." [1] The president can be brought to trial only before the Senate, and only by action of the Chamber of Deputies. Similarly, the Senate has exclusive jurisdiction of cases involving ministers " accused by the Chamber of Deputies of crimes committed in the exercise of their functions "; [2] for offenses not committed in the exercise of their official duties, ministers are amenable to the ordinary courts, except in so far as protected by their immunities as members of Parliament.[3]

For the trial of cases involving alleged attacks on the safety of the state, the Senate is constituted a high court of justice by decree of the president of the republic, issued in ministerial council; and jurisdiction extends equally to public officers and private individuals. But the decree constituting the Senate a high court is purely optional, and the jurisdiction of the ordinary courts remains unaffected. When organized as a court, the Senate has full power to summon witnesses, punish persons who refuse to appear, administer oaths, and obtain evidence by every means that can be legally employed by the ordinary courts. The essentially political nature of the Senate's functions as a court is apparent. The chamber is itself a political body; its judicial activities are intended to have a more or less political, although legitimate public, object; the government is constantly subject to the temptation to utilize the High Court for illegitimate political ends. Despite numerous proposals, however, that the existing arrangements be drastically modified, it is still the opinion of most French jurists and publicists that the system has not been abused and that it is a desirable safeguard

[1] Law on the Organization of the Senate, Art. 9.
[2] Law on the Relations of the Public Powers, Art. 12.
[3] See p. 403.

of the public well-being. In point of fact, the sittings of the Senate as a court are infrequent. The most notable trials conducted before the body in recent years were those of the former Minister of the Interior, Malvy, in 1918, and ex-Premier Caillaux in 1920; perhaps the most notable in earlier times was the trial of Boulanger and his accomplices in 1889.[1]

[1] The High Court is briefly described in Esmein, *Éléments de droit constitutionnel* (4th ed.), 888–900, and Bard et Robriquet, *Constitution française de 1875*, 255–274. See A. Roux, "L'Affair Malvy et le pouvoir souverain du Sénat comme Haute Cour de Justice," in *Rev. Polit. et Parl.*, Dec., 1918; L. Duguit, "L'Arrêt du Séndat ans l'affaire Malvy," *ibid.*, Aug., 1919; P. Vergnet, *L'Affaire Caillaux* (Paris, 1919).

CHAPTER XXVI

LOCAL GOVERNMENT AND ADMINISTRATION

Conditions before 1789.— Students of political science are familiar with the fact that governmental systems are, as a rule, less stable at the top than at the bottom. Local institutions, imbedded in the interests of the community and supported by the native conservatism of the ordinary man, strike root deeply; the central, national agencies of law making and of administration are played upon by larger, more unsettling forces, with the result of considerably increasing the probability of change. The history of modern France affords notable illustration of this principle. Between 1789 and 1875 the French national government was remarkably unstable. During most of this same period, however, the institutions of local government and administration underwent only slight change; indeed, the system in operation to-day differs but little structurally from that set up a century and a quarter ago. The origins of this system, it is true, are to be traced to revolution. In most of its essentials it was created by the National Assembly of 1789 and by Napoleon, and it rose upon the wreckage of a system which had lasted through many centuries of Capetian and Bourbon rule. Once established, however, it proved sufficiently workable to be perpetuated under every one of the governmental régimes which, between 1800 and the present day, have filled their successive places in the history of the nation.

Prior to the Revolution, the French administrative system was centralized, bureaucratic, wasteful, and inefficient. The old provinces had largely lost their importance, especially those in the three quarters of the country comprising the *pays d'élection*, where provincial assemblies either had never existed or were no longer convened. The provinces in the remaining portions of the kingdom, known as the *pays d'états*, had more autonomy and were more important; for the assemblies voted taxes, and even controlled part of the expenditures. Yet even here the old vigor was wholly lacking. From having been the local military commanders and the direct representatives of the king for a wide variety of purposes, the governors had become inactive

pensioners. Replacing the old province for administrative purposes was now the *généralité*, a jurisdiction — at first purely fiscal, but later also judicial and administrative — created as early as the sixteenth century. During the eighteenth century the number of *généralités* varied from thirty to forty; in 1789 there were thirty-two. In each was an *intendant de justice, de police, et de finances*, who controlled practically everything in the name of the king, either directly or through his agents, the *sub-délégués*. The one local division that preserved any real autonomy was the commune. The communal constitution of the eighteenth century seemed, indeed, democratic. There was a primary assembly, composed of all inhabitants who were liable to the *taille;* and this body elected communal officers, cared for communal property, and regulated local affairs. In point of fact, however, the assembly's independence was, as a rule, illusory. The *intendant* or his agents dictated or controlled almost its every act; which means that of true local government there was in pre-Revolutionary France little or none.[1]

Revolutionary and Napoleonic Changes. — When the National Assembly, in 1789, addressed itself to the reformation of local government, if did so in no faltering spirit. The communes — the little semi-political, semi-social *community* groups that had grown up through the centuries — were somewhat rearranged, but in general were allowed to stand, to the number of some forty-four thousand. But the old provinces and *généralités* were abolished and in their stead was erected a system of *départements*, districts, and cantons. Eighty-three departments were created, each divided into about half a dozen districts (544 in all); each district was cut into ten or a dozen cantons (6840 in all); and the cantons, in turn, were made up of varying numbers of communes. The most striking features of the system were its symmetry and its detachment from history and tradition. The departments were so laid out as to be substantially equal in size; and little attention was paid to ancient boundary lines and social cleavages, or to physical demarcations. "The new departments, districts, and cantons had no history, no associations, no inner life or bond of common feeling, and presented a smooth blank surface upon which the legislator might impress whatever pattern he thought proper."[2] Such a deliberate blot-

[1] For a brief description of local government in France before the Revolution see *Cambridge Modern History*, VIII, 37–46. Two important treatises are A. Babeau, *La ville sous l'ancien régime* (Paris, 1880), and A. Luchaire, *Les communes françaises* (Paris, 1890).

[2] *Cambridge Modern History*, VIII, 190.

ting out of the old areas of local government would be very unlikely to take place in England; although even there, as we have seen, the Local Government Acts of 1888 and 1894 introduced certain drastic changes.[1] The elements that came into control in 1789 in France, however, were prepared to sweep away every name and form which could not easily be separated in the public mind from the absolutist régime.

For the time being, furthermore, ultra-democratic ideals were in the ascendant, and the measures of 1789–90, reënforced by the constitution of 1791, transferred at a stroke almost the entire control of local affairs from the agents of the crown to the elected representatives of the new areas. The governing authorities of the new department became: (1) a deliberative council of thirty-six persons, elected by manhood suffrage for a term of two years; (2) an executive directory, consisting of nine of the councilors; and (3) a *procureur général*, elected by the people for four years, but wielding slender authority. The district was given a similar but smaller council and directory, and the commune was provided with an elective mayor and council.[2]

Experience proved that the reformers had gone too far in the direction both of democracy and of decentralization. Upon the reëstablishment of order after the fall of Robespierre, the rule of official experts was revived, and with it a large amount of centralized supervision and control. The constitution of the Year III (1795) preserved the elective principle, but abolished the districts, revived the cantons (which had been suppressed two years earlier) and made them the basal administrative divisions, introduced a new class of "cantonal municipalities," and in other ways reconstructed the machinery of local government and administration, with a view mainly to a more general and wholesome control by the National Directory at Paris.[3] Only towns having a population of five thousand or more retained their separate communal organization; those that were smaller were merged in the reorganized cantons, whose governing body was made up of *adjoints*, or "assistants," representing the petty communes. On the other hand, towns having a population exceeding one hundred thousand were formed into at least three municipal units.

Under the Napoleonic régime, the country came back to a

[1] See p. 225.

[2] For the text of the *Décret sur les Municipalités* of December 14, 1789, see Hélie, *Constitutions*, 59–72. An English version is in Anderson, *Constitutions*, 24–33.

[3] Anderson, *Constitutions*, 233–236.

scheme of thoroughgoing centralization. The commune was restored as the basal administrative unit, and the canton became a judicial district.[1] But the mayor, *adjoints* (assistants), and the members of the communal council were no longer elected by the people, but instead were appointed by the central government, directly or through its departmental agents. A great law of February 17, 1800, established in each department a prefect, appointed by the First Consul, responsible only to him, and endowed with hardly less extensive powers than the *intendant* had wielded under the *ancien régime*. The term "prefect" was Roman, and it served to emphasize the close kinship between the Napoleonic and Roman administrative systems. The general council of the department was preserved, but its sixteen to twenty-four members were henceforth to be named for a term of three years by the First Consul. Each department, furthermore, was divided for administrative purposes into *arrondissements*, resembling the districts created in 1789, and in each of these was placed a sub-prefect and a council of eleven members, likewise appointive. The sub-prefect served as a local deputy of the prefect, and one of his principal duties was to assist in the continuous and close supervision of the affairs of the communes in his jurisdiction.[2]

From Napoleon to the Third Republic. — The Napoleonic administrative system — simple, symmetrical, bureaucratic, and highly centralized — has survived in most of its features to the present day.[3] The fall of the Corsican from power brought no considerable change, and none took place until after the revolution of 1830. De Tocqueville's studies of American democracy aroused a strong sentiment, however, in favor of a larger autonomy for the departments and communes, and under the Orleanist monarchy the rigor of the Napoleonic system was somewhat relaxed. A law of 1831 made the municipal council elective; one of 1833 did the same thing for the councils of the

[1] The number of communes was now reduced from 44,000 to about 36,000.

[2] Anderson, *Constitutions*, 283–288. G. Alix, "Les origines du système administratif français," in *Ann. des Sci. Polit.*, July-Nov., 1899.

[3] Its influence upon the administrative systems of other countries — Belgium, Italy, Spain, and even Greece, Japan, and various Latin-American states — has been profound. "Judged by its qualities of permanence and by its influence abroad, the law of 1800 is one of the best examples of Bonaparte's creative statesmanship, taking rank with the Code and with the Concordat among his enduring non-military achievements. If, in the nineteenth century, England has been the mother of parliaments and has exercised a dominant influence upon the evolution of national governments, France has had an equally important rôle in molding systems of local administration among the nations." Munro, *Government of European Cities*, 7.

department and the *arrondissement;* and both measures established a reasonably liberal suffrage. In 1838 the powers of the two councils were increased.[1]

At the establishment of the Second Republic, in 1848, the essentials of the administrative system then prevailing were retained. It was enacted merely that the various councils should be elected on a basis of manhood suffrage, and that in communes of fewer than six thousand inhabitants the council should elect the mayor and the *adjoints*, while in the larger ones appointment should be made, as before, by the central authorities. Upon the conversion, in 1851–52, of the Second Republic into the Second Empire, the decentralizing tendency, however, was once more checked. Throughout the reign of Napoleon III the communal council continued to be elected, at least nominally, by manhood suffrage. But so thoroughgoing was the prefectural supervision that the councils retained very little initiative or independence of action. Even the privilege which the smaller communes enjoyed of choosing their own mayors was lost; while by a decree of March 25, 1852, the powers of the prefect in communal affairs were substantially extended. Under the Second Empire the prefect was more truly than ever before the pivot of the administrative system; and, despite the survival of elective councils in the departments, the *arrondissements*, and the communes, local automony again practically disappeared.

General Aspects since 1871. — The establishment of the Third Republic brought few immediate changes. Even at a time of extreme political unsettlement, when the liberal elements were planning drastic reorganizations in almost every direction, there was little demand for a wholly reconstructed system of local government; rather, it was assumed that, in its structure at all events, the existing system would be continued. One thing, however, was widely desired, namely, larger freedom for the communes. The National Assembly took up this question promptly, but in a spirit of extreme caution, and the most that could be obtained at once was a revival of the plan adopted in 1848, which permitted the smaller communes to select their own mayors and *adjoints*. Even this concession was recalled in 1874, although the Parliament elected in 1876 restored it. Agitation, however, continued, and at length, in March, 1882, a law was passed which allowed all communes (except Paris), regardless of size, to select their mayors and *adjoints* without outside interference.[2] Even

[1] The texts of these acts are in Hélie, *Constitutions*, 1019–1050.
[2] Duvergier, *Collection complète des lois*, LXXXII, 116–118.

before this time, a general revision and codification of local governmental law, such as had last been undertaken in 1837, was sorely needed, and after the act of 1882 was placed on the statute book the attention of Parliament was turned afresh to the subject. Some delay arose from the difference of opinion as to the extent to which the principle of "home rule" should be applied in the proposed code. But shortly before the close of 1883 the task of revising and unifying the entire body of municipal law was referred to a special commission of nine members. The commission reported early in 1884, and the code which it produced was, with some changes, adopted by Parliament and, on April 5, promulgated as law. This *loi sur l'organisation municipale*, in 157 articles, is a remarkably comprehensive, yet simple and lucid, instrument.[1] It does not apply to Paris; but elsewhere throughout France it is still, with only minor modifications, the basis of all village, town, and city government.[2]

The several geographical divisions of the country which are employed for governmental purposes have always appeared in two quite different aspects. On the one hand, they are areas arranged and utilized by the national government for purposes of its own administrative work. They are like customs districts or internal revenue districts in our own country, which are in charge of officers who are officers of the central government and who exercise only powers that are powers of the central government. On the other hand, the divisions — at all events the departments and communes — are areas which have governments of their own, with legislative councils which make local laws, with administrative officers who apply these laws, with separate budgets and separate "services" — in short, areas that have been endowed by the state with substantial governmental autonomy. In point of fact, the function of representing and acting for the central government in the department or commune falls to the same persons who carry on the area's separate and local governmental work. But the dual aspect of the situation remains; indeed, the whole character of the prefect's or the mayor's office hinges on the officer's possession of two distinct sets of functions which sometimes tend to be more or less incompatible.

Looking back over the successive stages of local governmental development in France, one notes that the supercentralized Napoleonic system has been liberalized and brought more within the control of the people of the various communities by three

[1] Duvergier, *Collection complète des lois*, LXXXIV, 99–148.
[2] Munro, *Government of European Cities*, 12.

main processes: (1) the substitution of popular election of local officials, under a gradually widened franchise, for appointment by the central authorities; (2) the enlargement of the powers of the locally elected bodies, especially the legislative powers of the departmental and communal councils; and (3) an increase of the range of independent action, without consultation with the authorities at Paris, of the local agents of the central government. The first two processes involve real decentralization; the central government surrenders powers to the local bodies, and, through them, to the people. The third process involves, rather, what the French call deconcentration; powers remain in the hands of the representatives of the central governments as such, yet they may be exercised more freely, more expeditiously, and perchance more in accordance with local sentiment or desire than before. Decentralization has thus far been applied principally to the commune, which has a vigorous political life of its own. The department and its administrative subdivision, the *arrondissement*, have been to some extent "deconcentrated," but they remain primarily geographical circumscriptions of the national administration — areas within which the general government, acting through its own agents, brings home to the people the force and beneficence of its authority. France, therefore, presents the spectacle of a nation broadly democratic in its constitution, its central government, and its local organs of legislation, yet more highly centralized in its administrative arrangements than any other principal state of western Europe. Not only is central control far greater than in England; it is not split up among a half dozen scattered branches of the national government, as it is there, but is gathered in the hands of a single great directing agency at Paris, the Ministry of the Interior.[1]

A notable consequence of the centralization of administration is uniformity of machinery and methods. On the other hand, the passion for uniformity and symmetry has been one of the sustaining forces of centralization. Frenchmen in all parts of the country live under the same system of local government and administration, elect the same kinds of local councils, submit to the authority of the same kinds of local officers, have dealings with the same kinds of agents of the government at Paris, and to a very large extent pay the same taxes and obey the same laws. It would be natural for the *arrondissements* and cantons to be uniformly organized and administered. They are not political,

[1] Berthélemy, *Traité élémentaire de droit administratif* (4th ed.), 93. For further references see p. 472, below.

self-governing divisions. But the departments also are organized under general laws and in an absolutely uniform manner, notwithstanding their natural dissimilarities and their modest but not negligible political powers; and — what is more extraordinary — the thousands of communes, large and small, urban and rural, industrial and agricultural, are also governed under a system which, in its fundamentals, permits practically no variations. All communes are organized in accordance with the code of 1884, and, as will appear, the only flexibility in the system is such as arises from automatic adaptation, within a limited range, of the number of *adjoints* (with their subordinates) and of councilors to the population of the commune; the organs of government, their functions and interrelations, are everywhere the same. "Much is said in the United States," remarks an American writer, "about the impossibility of providing, in a general charter law, for the satisfactory administration of all classes of cities. How, then, would the legislators of an American state regard a proposal to establish a uniform framework of administration applicable not only to all cities of whatever size, but to towns and villages as well? This, nevertheless, is what the French municipal code has done, and with no very evil results."[1] It is, of course, to be observed that conditions in France have been more favorable for the successful operation of such a system than in the United States, or perhaps anywhere else. The country is predominantly rural; the population has grown very slowly and is exceptionally homogeneous; and strong and uniform control by the central government is supported by a tradition which nowhere exists in English-speaking countries.[2]

Local Government To-day: Department, Arrondissement, and Canton. — For administrative purposes, the republic was first of all divided, up to the close of the Great War, into 86 departments, in addition to the "territory" of Belfort, a remnant of that department of the Upper Rhine which Germany largely absorbed in 1871.[3] Since 1881 the three departments

[1] Munro, *Government of European Cities*, 14–15.

[2] A useful history of the French administrative system is E. Monnet, *Histoire de l'administration provinciale, départementale et communale en France* (Paris, 1885). The system is compared with other systems in P. Leroy-Beaulieu, *Administration locale en France et en Angleterre* (Paris, 1872); P. Ashley, *Local and Central Government* (London, 1906); and F. J. Goodnow, *Comparative Administrative Law* (2d ed., New York, 1903). The best systematic description is Berthélemy, *Traité élémentaire de droit administratif*. For references on decentralization see p. 483, below.

[3] The number of departments was brought up to this figure as a result of slight changes at intervals during the nineteenth century. The description here given takes no account of the recovery of Alsace-Lorraine by France at the close of the

of Algeria have been treated, for most purposes, as part of France proper. At the head of each department is a prefect, appointed for no fixed term, and removable nominally by the president of the republic, but in reality by the Minister of the Interior. The prefect is by far the most important of all local officials, and is, of course, at the same time an agent of the central government and the executive head of the department in the management of local affairs. As agent of the general government he acts, in some instances, upon detailed instructions; in others, he enjoys a wide range of discretion. His powers extend to practically all public matters affecting the department. He supervises the execution of the national laws; he maintains a vigorous control over all national administrative officials in the department, even to the extent of annulling their acts; he gives the authorities at Paris information and advice concerning the affairs of the department; he nominates to a variety of subordinate offices; he watches over the communes, whose measures in many cases become effective only after receiving his assent; he issues by-laws, or ordinances. His discretion has been increased in many directions, and nowadays there are few, if any, local officials in any country whose authority is so great. Being essentially a political officer, he is liable to sudden termination of his tenure by a change of ministries at Paris. Ordinarily, however, such changes have little effect outside the capital.

The prefect is assisted by a secretary-general, by various bureaus of employees, and by a *conseil de préfecture*, appointed by the central government. This prefectural council, consisting as a rule of three persons, audits accounts, advises the prefect, and serves as a court of first instance in the trial of cases arising under administrative law. The prefect is not obliged to take its advice; and as a rule he has a controlling part in its handling of administrative cases, notwithstanding that he is often a party to them.[1] Visiting the chief town of a department, one can hardly fail to observe an imposing, well-kept building before which the tricolor is flying, and bearing in large letters the word "Prefecture." It is in this departmental capitol that one will find the quarters of the prefect and the various offices or bureaus of the prefecture.

As executive head of the department, the prefect is required to work with a *conseil général*, or representative assembly, whose

Great War. Arrangements for local government in the regained lands were incomplete at the time of writing (1920).

[1] See p. 460.

place of meeting is likewise found in the prefectural building. The prefect's principal function in this capacity is to see to the enforcement of the council's orders. The council is elected by manhood suffrage under a scheme which gives each canton one representative. The term of members is six years, and half retire triennially. In accordance with the French tradition in such matters, all are unpaid. The powers of the assembly are not extensive; aside from apportioning the direct taxes among the *arrondissements*, they relate mainly to the construction and upkeep of highways, bridges, canals, school buildings, and asylums. Under law of 1871 a council may not vote upon any question of a political character — a fact of which the prefect is likely to remind the members if their discussions indicate that they have forgotten it. There are but two regular sessions a year. The first, held soon after Easter, is devoted to general matters, and is limited to fifteen days; the second, held in the early autumn, is devoted to the budget (which is prepared by the prefect), and may last a month. During the intervals between sessions the council is represented by a *commission départementale*, or permanent delegation, of from four to seven members, which meets once a month to deal with current affairs. The measures of both the council and this commission may be vetoed by the central government; and under certain conditions the council can be dissolved by the same authority. As the status of the council abundantly proves, the department remains an essentially artificial unit, valuable chiefly as a subsidiary of the central administration. During the century and a quarter of its existence it has not become — indeed has been deliberately prevented from becoming — a sphere of forceful, independent governmental activity.[1]

Next to the departments stand the *arrondissements*, or districts, of which there were on the eve of the Great War 362. Except those in the department of the Seine, and such others as contain the capitals of departments, each has in its chief town a subprefect, who is appointed by the president of the republic, and who serves as a district representative of the prefect. Each has a *conseil d'arrondissement*, or *arrondissement* council, consist-

[1] The monumental treatise on the department is G. Bouffet et L. Périer, *Traité du département*, 2 vols. (Paris, 1894–95). See also G. Dethan, *De l'organisation des conseils généraux* (Paris, 1889); A. Nectoux, *Des attributions des conseillers généraux* (Paris, 1895); and P. Chardenet, *Les élections départementales* (Paris, 1895). Excellent brief statements will be found in Berthélemy, *Traité élémentaire de droit administratif* (4th ed.), 132–175, and M. Block, *Dictionnaire de l'administration française* (5th ed., Paris and Nancy, 1905), I, 933–948, 1101–1116.

ing of at least nine members, elected by manhood suffrage for a term of six years. But since the *arrondissement* has no corporate personality, no property, and no budget, the council has only one important function, namely, to allot to the communes their quotas of the taxes assigned to the *arrondissement* by the general council of the department. Speaking strictly, the *arrondissement* is not an area of local self-government at all. It has no political character, but is merely an administrative jurisdiction of the central government. It derives importance also, however, from being normally the seat of a court of first instance. From 1875 to 1885, and again from 1889 to 1919, the *arrondissement* was, in addition, the electoral district for the Chamber of Deputies. The area now employed for this purpose is, however, the department.[1]

The canton is an electoral and a judicial, but not strictly an administrative, unit. It is the area from which the members of both the departmental general council and the council of the *arrondissement* are chosen, and it forms the jurisdiction of the justice of the peace. The total number of cantons was, in 1914, 2911. Most of them contain about a dozen communes, although a few of the larger communes are divided into a number of cantons.

Local Government To-day: the Commune. — From the point of view of popular self-government, far the most important local division of France, and the only one whose origins antedate the Revolution, is the commune. The commune is at the same time a geographical area and a corporate personality. "On the one hand," says a recent writer, "it is a tract of territory the precise limits of which were defined by the law of December 22, 1789, or by some subsequent law or decree; for by the law of 1789 all local units which had a separate identity during the old régime were authoritatively recognized as communes, and since that enactment there have been a number of suppressions, divisions, consolidations, and creations of communal units. On the other hand, the commune is an agglomeration of citizens united by life in a common locality and having a common interest in the communal property. A commune ranks as a legal person: it may sue and be sued, may contract, acquire, or convey property, — it may, in general, exercise all of the ordinary rights of a corporation."[2]

[1] See p. 425. Block, *Dictionnaire de l'administration française*, I, 256–260; Berthélemy, *Traité élémentaire de droit administratif* (4th ed.), 144–146, 175–177.

[2] Munro, *Government of European Cities*, 15.

Of communes there were, in all, in 1911, 36,241. In both size and population they vary enormously. Some consist of diminutive hamlets of twenty or thirty people; others comprise cities like Bordeaux, Lyons, and Marseilles, with populations in excess of a quarter of a million; Paris itself, with upwards of three million people, is a commune. At the census of 1911, 27,000 communes had a population of less than one thousand; 17,000, of less than five hundred; 9000, of less than three hundred; 137, of less than fifty. On the other hand, 250 contained a population of more than ten thousand, and fourteen of more than one hundred thousand. In area they vary all the way from a few acres to the 254,540 acres of the commune of Arles.[1]

Except Paris[2] and Lyons, all communes are organized and governed in the same manner. Each has a council, whose members are elected by manhood suffrage (usually by *scrutin de liste*), for a term of four years. All members are elected at the same time, *i.e.*, on the first Sunday in May in every fourth year.[3] In communes whose population is under five hundred the number of councilors is ten; in those whose population exceeds five hundred the number is graduated on a basis such that a commune of sixty thousand people has a council of thirty-six, which is the maximum. The council holds four ordinary sessions a year — in February, May, August, and November. Special meetings may be convoked at any time by the prefect, the sub-prefect, or the mayor. Sessions are held in the *mairie*, or municipal building, and are open to the public. Except the May session, at which the budget is considered, a regular meeting may not be prolonged beyond fifteen days, save with the consent of the sub-prefect. The maximum duration of the May sitting is six weeks. In contrast with both English and American usage, which involves frequent but short council meetings, the French plan thus calls for sessions held at long intervals but extended, as a rule, over a number of days.

Speaking broadly, the functions of the council comprise the administration of the purely local affairs of the commune and the formulation and expression of local needs and demands. In the municipal code of 1884 the powers of the body are defined with exceeding minuteness. Some are purely advisory, to be exercised when the council is called upon by the higher adminis-

[1] A. Porche, *La question des grandes et petits communes* (Paris, 1900).

[2] See p. 479.

[3] The electoral process is described in detail in Munro, *Government of European Cities*, 17–44.

trative authorities for an expression of local interest or desire concerning a particular question. Advice thus tendered may or may not be heeded. Other powers involve initiation by the council of certain kinds of measures, which, however, may be carried into effect only with the assent of the higher authorities. Among the thirteen such measures which are enumerated in the code the most important are those pertaining to the purchase, sale, or other legal disposition of property belonging to the commune. Finally, there is a group of powers — relating principally to the various communal services, *e.g.*, parks, fire protection, etc. — which are vested in the communal authorities (council and mayor) independently. But the predominating fact is that even to-day the autonomy of the commune is restricted in every direction. Many communal measures become valid only upon receiving the approval of the prefect, and practically any of them may be suspended or annulled by that official. Some require the consent of the departmental council, or even of the president of the republic; and by decree of the president the council itself may be dissolved at any time.[1]

The executive head of the commune is the *maire*, or mayor, who is elected by the municipal council, by secret ballot, from its own membership, for a term of four years. Associated with the mayor is, in communes of 2500 inhabitants or fewer, an *adjoint*, or assistant, similarly chosen. In communes of 2500 to 10,000 inhabitants there are two assistants, and in those of over 10,000 there is an additional one for every 25,000 people in excess of the figure named. Except in Lyons, however, where there are seventeen, the number may not exceed twelve. They are unpaid; and the mayor has no stipend, although the council may give him an allowance for expenses. The mayor plays the dual rôle of executive head of the commune and representative (although not the appointee) of the central government. The powers which he exercises vary widely according to the size and importance of the commune. But in general it may be said that he appoints to the majority of municipal offices, publishes laws and decrees, issues *arrêtes*, or ordinances, supervises finance, organizes and controls the local police, executes measures for public health and safety, safeguards the property interests of the commune, represents the commune in cases at law and on ceremonial occasions, and acts as the agent of the central government in the supervision of census-taking, the preparation of the electoral lists, the enforcement of military service,

[1] On the council's powers see Munro, *Government of European Cities*, 46–61.

and the keeping of complete records of births, deaths, and marriages.

The functions of the mayoral office are in practice distributed by the mayor among the assistants, to each of whom is assigned a particular department, such as that of streets, of sanitation, or of fire protection. As a rule, the mayor reserves to himself the control of police. For the acts of the assistants, however, he is directly responsible; and all acts, whether of the mayor or of the assistants, which relate to the interests of the general government are performed under the strictest surveillance of the prefectural authorities. The mayor may be suspended from office for a month by the prefect, or for three months by the Minister of the Interior; and he may be removed from office altogether by order of the president. The assistants are, after all, amateurs, and, not being paid, are not expected to give the whole of their time to the affairs of the commune. The routine work of administration is carried on by paid employees under the immediate direction of the *secrétaire de mairie* (whose functions are similar to those of the English town clerk), the *receveur municipal*, or treasurer, the *commissaire de police*, and such other professional and salaried heads of departments as the size of the commune requires. In general, these subordinates are locally appointed; but the *commissaire de police* is named by the president of the republic, and in large communes the treasurer is similarly designated from a list of three persons nominated by the council.[1]

Despite the restrictions by which it is hedged about, the commune remains the true focus of local life. Its activities, though frequently on a petty scale, run the gamut of finance, commerce, industry, education, and politics. So strong is the communal spirit that public sentiment will but rarely permit the suppression of a commune, or even the union of two or more little ones; and, in truth, the code of 1884 recognized the fixity of communal identity by permitting changes of communal boundaries to be undertaken by the departmental authorities only after an *enquête* designed to ascertain local feeling on the subject. Save by special decree of the president of the republic, not even the name of a commune may be altered; and such changes are nowadays rare.[2]

[1] On police organization see R. B. Fosdick, *European Police Systems* (New York, 1915), 23–25 and *passim*.

[2] The best account of the French commune in the English language is Munro, *Government of European Cities*, 1–108 (see also bibliography, pp. 380–389). An older but still useful account is A. Shaw, *Municipal Government in Continental Europe* (New York, 1895), 146–209. The most convenient brief accounts in French are

The Government of Paris. — Most of the world's great capitals have systems of government which are more or less peculiar to themselves, and Paris is no exception. The municipal law of 1884 does not apply, and the city, while technically a commune, has different officers and different powers from any other French municipality. The reasons for excepting it from a system otherwise nation-wide are not difficult to discover. In the first place, it is many times as large as any other city in the republic, and its population is traditionally fickle in political matters. Throughout modern times, and especially since 1789, it has been a perpetual fount of unsettling influences, the point at which revolutions, in long succession, have had their beginning. Protection of the nation against subversive forces and tendencies seems to require that the central government shall have a special control over the capital's affairs. Furthermore, the city is filled with buildings, monuments, and other national properties, whose security is a matter of concern to the people of the entire country.

The laws under which the capital is governed date from 1837, 1867, and 1871. The first two defined the powers and functions of the prefects; the last regulated the organization of the council. There is no mayor of the city as a whole. Instead, the chief executive officers are two coördinate prefects — the prefect of the Seine and the prefect of police. Both were appointed by the president of the republic; both can be removed by him at any time; both are directly responsible to the Minister of the Interior. Both, it must be further observed, are prefects of the Seine *département*, which includes not only the city of Paris, but a considerable amount of surrounding country.[1] Hence, together they have all of the powers and functions belonging to a prefect in any department. But, in addition, they have, in Paris, those powers and functions that would be possessed by the

Block, *Dictionnaire de l'administration française*, I, 738–852, and Berthélemy, *Traité élémentaire de droit administratif* (4th ed.), 184–214. Among general treatises may be mentioned M. Block, *Entretiens sur l'administration; la commune* (Paris, 1884); L. Bequet, *Traité de la commune* (Paris, 1888); P. Andre and F. Marin, *La loi sur l'organisation municipale du 5 avril 1884* (Paris, 1884); and F. Grelot, *Loi du 5 avril 1884* (Paris, 1889). The best and most recent extensive work is L. Morgand, *La loi municipale*, 2 vols. (7th ed., Paris, 1907). On municipal elections the best work is M. J. Saint-Lager, *Élections municipales* (6th ed., Paris, 1904). An excellent study is P. Lavergne, "Du pouvoir central et des conseils municipaux," in *Rev. Gén. d'Admin.*, 1900. See also A. G. Desbats, *Le budget municipal* (Paris, 1895); M. Peletant, *De l'organisation de la police* (Dijon, 1899); and R. Griffin, *Les biens communaux en France* (Paris, 1899).

[1] The jurisdiction of the prefect of police, indeed, includes some portions of the adjacent department of Seine-et-Oise.

mayor if there were one. Among numerous other duties, the prefect of the Seine supervises the general administration of the city's affairs as carried on in the twenty *arrondissements*, or wards — subdivisions which have a mayor, a group of *adjoints*, and permanent administrative staffs (but no elective councils), on the analogy of the ordinary communes. The prefect of police has independent control (subject only to the Minister of the Interior) of that branch of administrative jurisdiction which the French designate by the term "police," a field of jurisdiction which, it must be observed, includes not only the maintenance of law and order, but the enforcement of public health regulations, the supervision of industrial establishments, and many similar activities.

The capital's municipal council consists of eighty members elected by popular vote, in single-member districts, for a term of four years. In organization, sessions, and procedure it is not markedly different from the ordinary communal councils; although it occasionally sits with twenty-one representatives of the two suburban *arrondissements* of Saint-Denis and Sceaux to form the council of the Seine department. The municipal council has far less power than the communal councils generally. It does not elect, and cannot effectively control, the administrative officers; its modest actions relating to the municipal property require the indorsement of the prefect of the Seine; almost its only substantial power is voting the budget.[1]

The Question of Administrative Reform. — The administrative system which has been described has been the object of much criticism, and its reconstruction has become a leading public question. The faults that are found with it can be summarized as follows: (1) the system sprang mainly from imperial bureaucracy and is fundamentally out of keeping with the democratic character of the French people and of the national constitution; (2) with the exception of the mayors and a few other officials chosen by the local councils, the central government directly or indirectly appoints all local administrative authorities, while the people neither elect nor control any of these authorities directly; (3) the elected councils have no very extensive power, but on the contrary are restricted at almost every turn by the *tutelle administrative*, as exercised over them, and over all local authorities, by the government at Paris; (4) the powers and functions

[1] For a fuller account of the government of Paris see Munro, *Government of European Cities*, 91–108, and Berthélemy, *Traité élémentaire de droit administratif* (4th ed.), 214–221. General treatises include G. Artigues, *Le régime municipal de la ville de Paris* (Paris, 1898), and M. Block, *L'Administration de la ville de Paris et du département de la Seine* (Paris, 1898).

of the prefect, in particular, are of such a nature that there can never be real local liberty until the office is abolished, or at all events completely altered; (5) the sub-prefects, in the *arrondissements*, perform no necessary work that could not be cared for otherwise, although they cost the country a large sum every year; (6) the present system, indeed, encourages an undue multiplication of functionaries, entailing unjustifiable burdens for the taxpayer; (7) the system gives the government too many agents through whom to influence the voters in parliamentary elections; and (8) the national parliament is overburdened with legislative and administrative business that ought to be taken care of locally, causing neglect of large national concerns, while yet entailing intolerable delays in the conduct of departmental and communal affairs.[1]

There are, of course, counter-arguments. One of them is that close supervision by the central government is necessary to protect the taxpayers against extravagance on the part of the local — especially the communal — councils. Another is that the central government must depend largely upon the local authorities for the execution of national laws, and that, therefore, these authorities must be subject to central control. It is categorically denied, too, that any considerable class of functionaries belonging to the present system is unnecessary; of the sub-prefects it is specifically affirmed that, in the larger departments at all events, they are indispensable administrative agents and informational intermediaries.

Since 1894, when at the instigation of the Chamber of Deputies an extra-parliamentary commission of inquiry was created, the question has been almost continuously under discussion. Parliamentary and extra-parliamentary commissions have prepared voluminous reports upon it; the chambers have debated resolutions and plans relating to it; scores of books and pamphlets consider it from every angle; associations (notably a Fédération Régionaliste Française, founded in 1900, and a Ligue de Répresentation professionnelle et d'Action régionaliste, organized in 1913) have been established to promote action upon it; political parties and incoming ministries have repeatedly issued pronouncements upon it; in the parliamentary election of 1910 it took precedence over all issues except electoral reform;[2] and while

[1] Cf. the criticisms of the conditions of the functionaries (with particular reference to the persons employed exclusively by the national executive departments) presented above, pp. 404–406.

[2] Of the 597 deputies elected, 346 had given administrative reform a place in their platform.

the subject naturally fell into abeyance during the war, it was immediately revived after the armistice, and it again absorbs the attention of large numbers of influential people.

Proposals for reform run on many lines and look to widely differing degrees of decentralization. Perhaps the most common demand is for the abolition of the sub-prefectural office, although obviously this alone would work no great change. Many couple with this a demand for the suppression of the prefectural office also, which would entail a general reorganization, because that office is at present the cornerstone of the structure.[1] There is demand, too, that the prefectural councils be either abolished or reorganized on more democratic lines; and definite proposals were made in 1887, 1896, and 1908, with which the names of Fallières, Barthou, and Clemenceau, respectively, are connected, to transfer the councils' powers as administrative courts to other and differently constituted tribunals.

The proposal that has received the largest amount of attention in recent years, and that probably comes nearest to the end that is sought, is one looking to the reorganization of the country in great self-governing provinces or "regions." This is no new idea. The philosopher Comte worked out a plan for seventeen such regions in 1854, and ten years later Le Play proposed a similar division of the country into thirteen political areas. As developed by some of the later reformers, the plan would mean to abolish the departments altogether; as developed by others, it would mean, rather, to retain the departments for certain administrative purposes, but to group them into larger units, to which most of the major powers of local government would be transferred. In either case, the "region" would be endowed with much more autonomy than any French local government area now enjoys, and it would have both an elective legislature with substantial powers and a strong local executive, probably also locally elected. It would be the purpose, too, to lay out the new areas with regard for historical associations and physical unity, in the expectation that they would have a self-consciousness and a vitality which the purely artificial departments lack. In some cases the provinces which were swept away in 1789 — or areas very similar to them — would probably reappear.[2] Two projects

[1] This plan is advocated in H. Chardon, *Le pouvoir administratif* (new ed., Paris, 1912), Chap. iv.

[2] Thus, divisions that are usually provided for in specific proposals on the subject include Brittany, Normandy, Limousin, Poitou, Provence, Languedoc, etc., although not necessarily under these historic names. See the report of a "commission de l'administration générale départementale et communale" of the Chamber

of 1902 and 1907 which received much attention provided for twenty-five regional governments, each having its seat in a city which is the center of a territory with a distinct community of interest.

The regional plan is opposed in many quarters, sometimes on the ground that it would tend to revive the old provincial spirit which was an obstacle to national unity, sometimes on the ground that it would not remove the real sources of discontent, although most often on the ground that the administrative system as it stands is capable of being reformed in the desired directions without breaking up the jurisdictional areas to which the people have become accustomed. It is by no means assured that the regional plan will ever be adopted. The discussion of it reminds one in an interesting way, however, of the consideration of plans for legislative and administrative devolution in England, and both movements are indicative of a certain trend of thought, in these countries at all events, toward federalism.[1] No proposition looking to federalism, in the proper meaning of that term, has, however, been put forward seriously in France; and while it is safe to predict that both legislation and administration will be further decentralized in coming years, it is even more certain that France will remain a unitary state, and that, as also in England, central control will always be maintained at a level unknown in states that are organized on the federal principle.[2]

of Deputies, submitted February 6, 1918, and printed in *Rev. Gén. d'Admin.*, July–Aug., 1919, pp. 161–192.

[1] See pp. 201–205.

[2] The problem of administrative decentralization in France is lucidly discussed in Duguit, *Law in the Modern State*, Chap. iv. The best brief account of the movement for administrative reform is Garner, "Administrative Reform in France," in *Amer. Polit. Sci. Rev.*, Feb., 1919. The literature of the subject is very extensive. A few of the best titles are M. Hauriou, *La décentralisation* (Paris, 1893); P. Deschanel, *La décentralisation* (Paris, 1895); *ibid.*, *l'organisation de la démocratie* (Paris, 1910); C. Maurras et J. P. Boncour, *Un nouveau débat sur la décentralisation* (Paris, 1908); M. Lallemand, *Réorganisation administrative* (Paris, 1909); H. Chardon, *Le pouvoir administratif* (new ed., Paris, 1912); and J. Barthélemy, *Le problème de la compétence dans la démocratie* (Paris, 1918). The files of the *Rev. Gén. d'Admin.* should be consulted for documentary materials and for numerous articles, notably J. Hennessy, "La réorganisation administrative de la France," in the issues of May–June and July–Aug., 1919. See also J. T. Young, "Administrative Centralization and Decentralization in France," in *Ann. of Amer. Acad. of Polit. and Soc. Sci.*, Jan., 1898; C. Beauquier, "Un projet de réforme administrative; l'organisation régionale en France," in *Rev. Pol. et Parl.*, Nov., 1909; Vidal de la Blache, "Régions françaises," in *Rev. de Paris*, Dec., 1910; and L. Boucheron, "La réforme administrative après la guerre — le régionalisme," in *Rev. Polit. et Parl.*, Aug., 1918. The unsatisfactory condition of the functionaries is stressed in A. Lefas, *L'État et les fonctionnaires* (Paris, 1913).

CHAPTER XXVII

POLITICAL PARTIES

Origins: Republicans, Conservatives, and Radicals. — At an early stage of the French Revolution a party arose whose cardinal aim was the displacement of monarchy by a republican form of government; and, speaking broadly, the alignment of French parties since 1871 has been a product of the bitter rivalry between monarchical and republican ideas which went on uninterruptedly from the eighteenth century until after the Third Republic was definitely on its feet. Neither republicans nor monarchists were ever able to build up a single, compact, and durable party on the analogy of the great parties of England. Yet, in the main, the issues that were fought out, both in and out of Parliament, either directly turned on the question of the form that the government should take or served to bring out antagonisms and arguments that had their origin in monarchical or republican ideals. The republicans triumphed conspicuously in 1792, and again in 1848, when, in each case, a monarchical system was abruptly abolished; and although the republics set up on these occasions failed to strike root, republicanism as a creed never lacked influential and numerous adherents, whether under Bonapartist, Bourbon, or Orleanist régimes.

As has been pointed out, the National Assembly elected in 1871 was monarchist in the approximate proportion of five monarchists to two republicans — a proportion which probably prevailed substantially throughout the country. But neither the monarchists nor the republicans were anything more than ill-organized collections of mutually jealous groups. The monarchists, as we have seen, were sharply divided into Legitimist, Bourbon, and Bonapartist factions. The republicans, although more able to forget their differences and to act together at supreme moments, were quite as incapable of sustained cohesion. Like the monarchists, they were divided into three main groups. One was the Extreme Left, led by Gambetta. The second was the Left, led by Grévy, Freycinet, and Loubet. The third was the Center Left, which followed Thiers and Jules Simon. Even

in the face of an apparently overwhelming monarchist opposition, these groups often failed to work together. It was, for example, the defection of the Extreme Left that enabled the monarchists in 1873 to overthrow Thiers and to name as his successor the royalist Marshal MacMahon.

Under circumstances that have been described in an earlier chapter, the republican constitution of 1875 was eventually adopted. The elections of 1876 gave the monarchists a majority in the Senate, which they retained until 1882. But in the Chamber of Deputies the republicans from the first outnumbered their opponents in the proportion of more than two to one. In parliamentary usage, the monarchists were commonly referred to as the Right, although they were often called Reactionaries. It was understood that they were bent upon the overthrow of the republic, and doubtless at the outset most of them looked to such an eventuality. Gradually, however, the new régime intrenched itself in the loyalty, and even the affection, of the mass of the people, with the result that the revival of monarchy became less and less probable, and large numbers of men who had actively worked for the monarchist cause became only theoretic adherents of it, while others emulated the example early set by Thiers and openly espoused republicanism. Eventually — although no fixed date can be assigned — the line of cleavage between monarchists and republicans as such ceased to have practical importance; and the harsh party name Reactionary gave way to the milder term Conservative.

Meanwhile important changes took place in the ranks of the republicans. If we may regard the Chamber majority after the elections of 1876 as forming a Republican party, it is at least necessary to observe that the republican deputies were divided into no fewer than seven groups, each clinging to its own ideas and its own leaders, and all unable to work together smoothly unless extreme pressure — such as arose from the contest with President MacMahon in 1877 — was applied. So long as Gambetta lived, his followers kept up their nominal allegiance to the general Republican party. But after his death, in 1881, the group split off completely and became the Radical party; and in the elections of 1885 this party obtained enough seats (150) in the Chamber to make it impossible for the Republicans alone to retain control. Thenceforth there were, therefore, three principal party groups — the Conservatives, the Republicans, and the Radicals. No one of them was ever able to command a majority in the Chamber single-handed, and, therefore, the

politics of a long period turned upon the adoption of one or the other of two lines of tactics — the coalition of the two republican divisions to the end that they might rule as against a Conservative minority (the so-called policy of "republican concentration"), and the alliance of one of these groups with the Conservatives against the other republican group (spoken of commonly as a "pacification"). The first "concentration" ministry was that of Brisson, formed in 1885; the first "pacification" ministry was that of Rouvier, formed in 1887. In the middle nineties some attempts were made to create and maintain homogeneous ministries. The Bourgeois ministry of 1895–96 was composed entirely of Radicals and the Méline ministry of 1896–98 of Republicans. But at the elections of 1898 the Republican position in the Chamber broke down, and it was necessary to return, with the Dupuy ministry, to the policy of concentration.[1]

The Party Situation, 1900–14. — There is no need to follow through all of its stages the tortuous story of French party alignments under the Third Republic. Rather it will be profitable to survey the party grouping of comparatively recent times, to call attention to the growth of liberalism and of radicalism, especially as these political attitudes find expression in organized socialism, and, finally, to sum up certain characteristic features of French party life, with the reasons therefor. The first thing to be observed is that the old alignment of Conservatives and Republicans, if indeed it can be said nowadays to exist, means something totally different from what it meant in the formative era of the Republic. There is no single party which bears either name. There are "conservatives," but few of them are monarchists; there are republicans, but they include most conservatives and, indeed, almost everybody else. The party situation since 1900 can be made most concrete by viewing it in terms of the various groups of members as they sit in front of the presiding officer of the Chamber of Deputies; because, in accordance with continental custom, they there occupy places which denote both the general character of their tenets and the relationship which they bear to other political elements. At the president's extreme right sit the ultra-conservatives, at his extreme left the ultra-radicals; whence arise the terms Right and Left, as used to denote the portions of the membership

[1] Party history during the first decade of the Third Republic is most fully and authoritatively narrated in Hanotaux, *Contemporary France*, especially Vol. IV, on the period 1877–82.

which are of conservative and radical temperaments respectively. Groups whose views are intermediate occupy middle positions in the hall.

As matters have stood for upwards of two decades, the extreme right has been occupied by the Monarchists, and next to them have sat the members of the *Action Libérale* (Liberal Action). The Monarchist members at the outbreak of the war numbered only twenty-six. Some supported a Bourbon pretender, some a Bonapartist claimant; none were taken very seriously either inside or outside the chamber.[1] The *Action Libérale* was organized in 1901, when the great conflict over the relations of church and state was approaching a crisis; and its object was to reconcile clericalism, *i.e.*, in a general way, the interests of the Catholic Church, with republicanism. Its members, drawn mainly from the upper bourgeoisie, fully support the present form of government, but they demand the repeal of the anti-clerical legislation of 1901–07, and they urge the revision of the constitution so as to make the rights of property holders still more secure. The former electoral system worked to their disadvantage; hence they have been ardent supporters of *scrutin de liste* and proportional representation. They seek, too, to compete with the Socialists for the votes of the working classes by advocating minimum wage and other new labor laws, and by supporting trade-unionism and social insurance. That their appeal is not fruitless is indicated by the fact that in 1914 they polled 1,350,000 votes, which, however, were so scattered over the country that only 34 of the party's candidates were elected. Considering that the Unified Socialist party in the same election obtained 102 seats on a basis of one hundred thousand fewer votes, largely because of their concentration in industrial constituencies, it is not difficult to see why the *Action Libérale* favored proportional representation and the Socialists opposed it.

At the extreme left of the Chamber sat the Socialists, whose rise to prominence will be described presently. Between the Monarchists and *Action Libérale* and the Socialists sat from 1900 onwards a number of groups composing a *bloc*, or coalition. The circumstance that first brought these elements together was the Dreyfus controversy, and the original object of the union was to protect the republic against the forces of reaction and disruption which that controversy released. A strong organization was built up, and for almost fifteen years the *bloc* was able to

[1] On the survival of monarchist influences, up to some twenty years ago, see Bodley, *France*, II, 353–403.

control the ministries, dominate the Chamber, and shape the policies of the republic. "Reckoned from Right to Left," as a recent writer has described it, "the *bloc* included (1) the Progressist Republicans, headed by Paul Deschanel . . ., recruited from the upper middle class and from the small propertied class, devoted to the individual rights and liberties proclaimed by the Revolution, especially to the basic right of private property; (2) Radicals of varying titles, the core, and by far the most numerous, of the *bloc*, true disciples of Gambetta, shapers of bourgeois policies, intellectual radicals, most stalwart anti-clericals, including in 1910 such influential politicians as Senators Clemenceau and Combes and Deputy Caillaux; and (3) Radical Socialists, or, as would be more accurately descriptive, the 'socialistically inclined Radicals,' a remarkable group, who with pronounced anti-clericalism combined a determination to drag their more or less unwilling allies along the path of social reform and to do for the working classes what the French Revolution did for the bourgeoisie, a 'bourgeois party with a popular soul,' championing not only strict governmental regulation of industry but government ownership of all means of communication and transportation, likewise of national resources like mines, forests, oil fields, etc. Among the Radical Socialist group were to be counted several brilliant men, such as Briand, Millerand, and Viviani, who called themselves plain Socialists, but who were read out of the regular Socialist camp because of their willingness to enter coalition ministries with representatives of non-Socialist groups." [1]

The great issue that held the *bloc* together was anti-clericalism; and during the first decade of the century the anti-clerical program was carried rapidly forward: the religious orders were expelled from the country, church and state were separated, and larger provision was made for secular education. Then new questions pushed into the foreground — the taxation of incomes, electoral reform, the three-year term of military service, and several aspects of further social reconstruction. The groups in the *bloc* by no means thought alike on these matters, and after 1910 the combination gradually dissolved. At the elections of April-May, 1914, the *Action Libérale* on the one side and the Socialists on the other made substantial gains; while the bourgeois groups that had composed the *bloc* fared, in the words of the writer already quoted, as follows: "The Progressists adhered to their earlier principles and maintained their strength practi-

[1] Hayes, *Political and Social History of Modern Europe*, II, 365.

cally unimpaired. But the Radicals and Radical-Socialists were split up into a number of groups, which tended, both in the parliament and in the country at large, to gravitate toward one or other of two new and rival combinations. The first was the Unified Radicals, including such men as Caillaux, Combes, and Clemenceau, bent upon the vigorous prosecution of more extreme anti-clerical legislation, especially against private church schools, generally hostile to electoral reform, and lukewarm in the cause of labor legislation. The second new coalition was the Federation of the Left, whose principles were championed by Briand and by Poincaré, who had been elected to the presidency in January, 1913; it urged both labor legislation and parliamentary reform, and while not favoring any repeal of anti-clerical legislation, it was unwilling further to open the breach between Catholics and non-Catholics."[1] Following the election, cabinets rose and fell in swift succession; the main source of discord being the demand of the Socialists and other radical elements for immediate repeal of the three-year service law. With fine irony, the Great War cut short this controversy; and every important political group forthwith turned its full strength into the channels of national defense.[2]

Socialism Prior to 1905.—"The political history of France since the beginning of the Republic," says a French scholar, "presents, instead of an alternation between two parties of opposing programs, like those of Belgium or England, a continual evolution along one line, the constant growth of the strength of parties which represent the democratic, anti-clerical tendency."[3] Thus far, this phase of development has reached its culmination in the rise of the Unified Socialist party; and in view of the strong position which this party has gained in the country's politics, lawmaking, and administration, its growth and character require some comment. France is, indeed, the land that gave modern socialism birth. There were traces of socialism in the liberal thought of the eighteenth century, although the ideas of Mably, Meslier, Morelly, and other radicals were rather more communistic than socialistic;[4] and Baboeuf,

[1] Hayes, *Political and Social History of Modern Europe*, II, 367.

[2] The effects of the war on the party situation are described below. See pp. 496–501.

[3] C. Seignobos, "The Political Parties of France," in *Internat. Monthly*, Aug., 1901, 155. The best, and almost the only, treatise on French parties is L. Jacques, *Les partis politiques sous la iiie république* (Paris, 1913). The subject is covered less satisfactorily in H. Lagardelle, "Die politischen Parteien in Frankreich von 1871–1902," in *Zeitschrift für Politik*, V. Bd. Hf. 4, 1912.

[4] Janet, *Histoire de la science politique* (3d ed.), II, 650–671.

who was executed in 1797 for his part in a conspiracy against the government of the Directory, was a thoroughgoing socialist. The first half of the nineteenth century saw a steady growth of socialist doctrine and the rise, under the influence and leadership of Saint-Simon, Fourier, and Louis Blanc, of a socialist party of considerable coherence and strength. The driving forces in the revolution of 1848 were socialism and republicanism, although once the monarchy was overthrown, the socialists and republicans proved unable to work together, with the result that the republic failed and the socialist creed was discredited.[1] Thereupon, socialist propaganda practically ceased for a generation. There continued to be socialists, and there was a certain amount of socialist discussion and writing; but there was no socialist party or "movement." Unrest among the laboring masses was partially allayed by a measure of 1864 legalizing strikes, and another of 1868 tolerating trade-unions, and although the war with Prussia in 1870–71 deeply stirred the working people, the Paris uprising known as the Commune caused most exponents of socialist doctrine to be expelled from the country and left the cause leaderless.

The revival may be said to have begun with the repatriation, in 1876, of the political exile Jules Guesde, an able journalist, who began by establishing a new and widely read socialist journal, *L'Égalité*, and by persuading the third French labor congress, convened at Marseilles in 1879, to declare for socialism and, indeed, to take the name of Socialist Labor Congress. Henceforth the trade-union movement was dominated by socialist organizers and leaders, who, however, could not agree among themselves; so that both the socialist and the trade-union ranks broke into petty, contending factions whose bickerings it would be wearisome to describe. By 1890 there were five well-defined socialist groups, counting in their membership some of the most brilliant journalists, scholars, and lawyers of the country. At the elections of 1893 almost half a million socialist votes were cast, and forty socialist deputies were returned to the Chamber; and since, under the leadership of the scholar and

[1] For a brief survey of the beginnings of French socialism see Ogg, *Economic Development of Modern Europe*, Chap. xxi. See also R. T. Ely, *French and German Socialism in Modern Times* (New York, 1883), 1–142; W. B. Guthrie, *Socialism before the French Revolution* (New York, 1907); J. Peixotto, *The French Revolution and Modern French Socialism* (New York, 1901); P. Louis, *Histoire du socialisme français* (Paris, 1901); G. Isambert, *Les idées socialiste en France de 1815 à 1848* (Paris, 1905); and J. A. R. Marriott, *The French Revolution of 1848 in its Economic Aspect*, 2 vols. (Oxford, 1913).

orator Jaurès, the group was able to perfect a working organization, the beginning of socialism as a factor in parliamentary proceedings may be dated from this point. Presenting the group to the new Chamber, Jaurès declared that its guiding motives would be " allegiance to the republic and devotion to the cause of humanity." Throughout the period covered by this parliament (1893–97) the program of socialism was first expounded authoritatively in the Chamber, and put before the country with clearness and power. The division of forces, however, persisted, and strong effort had to be made to build up real party unity. Just when, in 1898–99, the outlook for union was bright, fresh dissensions arose over the attitude to be taken toward the Dreyfus affair and over the acceptance by one of the leaders, Millerand, of the portfolio of commerce in the ministry of Waldeck-Rousseau. The parliamentary group was completely disrupted, and an international socialist congress at Paris in 1900 was compelled by the resulting situation to devote its time principally — and fruitlessly, as it proved — to consideration of the " cas Millerand."

Throughout the years 1900–05 the socialist forces continued to have no unity, even in appearance. On the contrary, the bickerings of the various groups were constantly aired before the country and before the world, to the chagrin of socialist leaders in other lands. There were now two principal factions, or so-called parties. One was the *Parti Socialist de France*, or Socialist party of France, composed principally of the Guesdists. The other was the *Parti Socialist Français*, or French Socialist party, made up mainly of the followers of Jaurès. The policy of the one was to stand by the doctrine of Karl Marx and refuse to compromise or to coöperate with any group having less orthodox ideas or less fixedness of purpose than itself. The policy of the other was to " penetrate the democracy with the ideas of socialism," and to do it, in the words of Jaurès, " by collaborating with all democrats, yet vigorously distinguishing one's self from them."

Acknowledging freely, in a remarkable speech at the Bordeaux congress of 1903, that the policy of opportunism was complicated, awkward, and certain to create serious difficulties at every turn, Jaurès contended, none the less, that in it alone lay hope of the achievement of the socialist purpose. " Guesde is wrong," he declared, "in thinking . . . that the state is exclusively a class-state, upon which the too feeble hand of the proletariat cannot yet inscribe the smallest portion of its will. In a democracy, in a republic where there is universal suffrage, the state is not for

the proletarians a refractory, hard, absolutely impermeable and impenetrable block. Penetration has begun already. In municipalities, in parliament, in the central government, there has begun the penetration of socialistic and proletarian influence. . . . It is in part penetrated by this democratic, popular, socialistic force, and if we can reasonably hope that by organization, education, and propaganda this penetration will become so full, deep, and decisive, that in time by accumulated efforts we shall find the proletarian and socialistic state to have replaced the oligarchic and bourgeois state, then perhaps we shall be aware of having entered the zone of socialism, as navigators are aware of having crossed the line of a hemisphere — not that they have been able to see as they crossed it a cord stretched over the ocean warning them of their passage, but that little by little they have been led into a new hemisphere by the progress of their ship." [1]

This was clearly evolutionary, not revolutionary, socialism; and it differed from the socialism of the Marxists in France quite as profoundly as the socialism of the Revisionists differed from that of the Marxists in Germany.[2] At the International Socialist Congress at Amsterdam in 1904 Jaurès was compelled to enter the lists against August Bebel in defense of his ideas, and there occurred one of the most notable debates — "a titanic international duel," it has been aptly designated — in the history of the socialist movement. The burden of the French leader's argument was that, notwithstanding the fact that the socialists of Germany in congress at Dresden in 1903 had voted overwhelmingly against revisionism, it was not possible to pursue an identical policy in all countries, and as matters were in France, where the proletariat was already in a position to exercise control over the government, the policy of opportunism was not only permissible but fundamentally necessary. The logic of Bebel, however, prevailed, and the congress voted a revised resolution against opportunism based upon that adopted by the Germans at Dresden.

The Unified Socialist Party. — The outcome of the Amsterdam meeting cleared the way for socialist unification in France. The congress, indeed, voicing the desire of the socialists of all lands, urged, and practically ordered, that the French factions drop their quarrels and combine in a single party. The Guesdist element had stood with Bebel and the non-opportunist forces.

[1] Quoted in R. Hunter, *Socialists at Work* (New York, 1908), 74.
[2] See p. 699.

Jaurès and his followers had put forth their best effort and had been defeated, and they now accepted the decision loyally. In 1905, at the congress of Rouen, took place the long deferred fusion of the two groups in the *Parti Socialist Unifié*, or Unified Socialist party, of the present day, designated officially as the *Section Française de l'Internationale Ouvrière*, or French Section of the International Workingmen's Association.

The instrument of agreement between the contracting groups contained the following notable declarations: (1) " The Socialist party is a class party which has for its aim the socialization of the means of production and exchange, that is to say, to transform the present capitalistic society into a collective or communistic society by means of the political and economic organization of the proletariat. By its aims, by its ideals, by the power which it employs, the Socialist party, always seeking to realize the immediate reforms demanded by the working class, is not a party of reforms, but a party of class war and revolution. (2) The members of Parliament elected by the party form a unique group opposed to all the factions of the bourgeois parties. The Socialist group in Parliament must refuse to sustain all of those means which assure the domination of the bourgeoisie in government and their maintenance in power; must therefore refuse to vote for military appropriations, appropriations for colonial conquest, secret funds, and the budget. In Parliament the Socialist group must consecrate itself to defending and extending the political liberties and rights of the working classes and to the realization of those reforms which ameliorate the conditions of life in the struggle for existence of the working class. (3) There shall be complete freedom of discussion in the press concerning questions of principle and policy, but the conduct of all the Socialist publications must be strictly in accord with the decisions of the national congress as interpreted by the executive committee of the party." [1]

The united party grew rapidly in membership and in influence. Although founded in reaction against opportunism, it has steadily pursued a political policy. It has consistently sought to increase its strength in the Chamber of Deputies, and its members have had no hesitation in accepting municipal, departmental, and national offices; although it should be added that certain elements in the party never reconciled themselves to the idea of coöperation with the bourgeois groups, especially in the ministry. In 1885, when the socialists made their first concerted effort to in-

[1] S. P. Orth, *Socialism and Democracy in Europe* (New York, 1913), 289–291.

fluence the results of a parliamentary election, the total number of votes polled by their candidates was but 30,000. In 1889 their popular vote was 120,000, and in 1898, 700,000, or almost twenty per cent of the total. In 1910 the vote was 1,200,000, and the number of socialist deputies was raised to 105, of whom 75 were identified with the Unified party. At the elections of 1914 the total socialist quota became 132. Of these members, 102 belonged to the Unified party, which alone cast 1,250,000 votes; the other 30 were "Independent Socialists." Since 1910 the Unified party has either had a majority or has lacked but little of it in most of the cities and large towns throughout the country.

Memories of the differences between the Guesdist and Jaurèsite groups could not be instantly obliterated. They have not yet wholly disappeared. But since 1905 the unity of the party, although at times severely tested, has withstood every strain that has been put upon it; not even the Great War produced any extensive disruption. Not that the Unified party includes all French socialists. There are the Independent Socialists; also the Radical Socialists — men like Briand, Viviani, and Millerand, who, as has been said, consider themselves socialists, and who, in other countries, would be identified with organizations of a strictly socialist character. The hope of organized socialism in France lies, however, with the Unified party. As is true of the German Social Democracy, the number of bona fide, dues-paying members of this party is very much smaller than the number of votes polled by the candidates whom it places in the field. In 1905, the date of unification, the number of dues-paying members was only 27,000. By 1908 the number had risen to 52,000, and in 1914 it was 68,900. The principal reason for such slowness of growth is to be found in the policy of the trade-unions, which, while not discouraging their members from casting their votes for socialist candidates, have generally held aloof from the socialist organizations. The party is governed by a congress, meeting annually in some important town; and there is a committee to administer affairs during intervals between sessions.

The party program lays stress principally upon the socialization of the instrumentalities of production and exchange, involving the supplanting of the capitalistic by a collectivist organization of the state; and the means to be employed to this end is the acquisition of control over the state through the unification of the industrial classes in support of the party's policies. That, despite its opportunism, the party stands by its traditional ideal is indicated by a resolution adopted by the congress at Limoges

in 1907. "The congress," it was affirmed, "considering that any change in the personnel of a capitalist government could not in any way modify the fundamental policy of the party, puts the proletariat on its guard against the insufficiency of a program, even the most advanced, of the 'democratic bourgeoisie'; it reminds the workers that their liberation will only be possible through the social ownership of capital, that there is no socialism except in the socialist party, organized and unified, and that its representation in Parliament, while striving to realize the reforms which will augment the force of the action and the demands of the proletariat, shall at the same time oppose unceasingly, to all restricted and too often illusory programs, the reality and integrity of the socialist ideal."

A striking aspect of socialism in France is the extent to which the creed permeates all classes and professions. In England members of the educated classes belong mainly to one of the two great historic political parties, and in Germany there were, prior to 1918, no socialists in the governing class and comparatively few in the professions. In France, on the other hand, many men of education, wealth, and social standing have been willing to associate themselves with the masses, not only as leaders, but as private advocates of the enthronement of the people. Most of the leaders, indeed, are of bourgeois extraction. A recent writer has pointed out that among the representatives of the Unified party in the Chamber of Deputies after the elections of 1910 there were only thirty workingmen and trade-union officials, while there were eleven professors and teachers, seven journalists, seven lawyers, seven farmers, six physicians, and two engineers.[1] This very cosmopolitanism of the movement leads one to doubt whether there is any chance that the more radical portions of the party program will ever be realized. Certainly many men who at present lend their support to the party are in sympathy with its ultimate ideal in only a broad and theoretic way. It may be added that the temper of the French people as a whole runs counter to the socialistic aspiration. For while, as has been demonstrated on many historic occasions, no people is more ready to theorize and to talk radicalism, it is just as true that no people clings more tenaciously to its property and its property rights. The French are a nation of small farmers and shopkeepers, and while they have been persuaded to accept the nationalization of railways and various other forms of collectivism, they would be loath indeed to divest

[1] Orth, *Socialism and Democracy in Europe*, 116.

themselves of their traditional and treasured rights of private property.[1]

Parties and Ministries during the Great War. — The war inevitably forced party politics out of the accustomed channels, although the effect was not so pronounced as in England, because of the relative fluidity of French party alignments under normal as well as abnormal conditions. It was, for example, far easier for France than for England to come to the policy of a coalition war cabinet; all French cabinets, in peace as in war, are coalitions. When the war began, a ministry formed by the Radical Socialist Viviani in June, 1914, was in office, and the issues absorbing public interest were the repeal of the three-year service law and the imposition of a heavy income tax. The outbreak of hostilities consolidated public sentiment, banished issues that were not related directly to the international situation, and brought all parties and groups into active support of the government in the prosecution of the war. Doubt about the attitude of the Socialists in such a contingency was quickly dispelled; for although Jaurès opposed the country's entrance into the war and sought to organize a protest strike,[2] the great majority of leaders and members of the party, including the radical antimilitarist wing, rallied unhesitatingly to the national cause as soon as it appeared that the French government had done everything in its power to avert war and that Belgium and France were to be invaded by the Germans. After the first serious reverses in the field, Viviani reorganized the ministry (late in August, 1914) as a government of national defense. Great figures like Delcassé, Briand, and Millerand were brought in; and the Unified Socialist party delegated as its representatives the antimilitarists Guesde and Sembat, although making it clear that this was done, not with a view to a political coalition, but solely to promote the defense of the country.[3] France, therefore, obtained a broad-based war cabinet, composed of representatives of all parties, some nine months before England arrived at this stage.

[1] On French socialism since 1870 see Orth, *Socialism and Democracy in Europe*, Chap. v; R. Hunter, *Socialists at Work*, Chap. iii; Bodley, *France*, II, 463–486; M. Pease, *Jean Jaurès* (New York, 1918); G. Weill, *Histoire du mouvement social en France, 1852–1910* (2d ed., Paris, 1911), 210–343; H. Lagardelle, *Le socialisme ouvrier* (Paris, 1911), 1–213; A. Millerand, *Le socialisme française* (Paris, 1903); and P. Louis, *Histoire du socialisme française* (Paris, 1901).

[2] On July 31 he was assassinated by a war fanatic.

[3] Walling, *The Socialists and the War*, Chap. xiii. Viviani henceforth held the presidency of the council, *i.e.*, the premiership, without portfolio, and Guesde was likewise minister without portfolio. This meant the revival temporarily of a practice which had not been followed since the Second Empire.

This policy of "comprehension" was maintained throughout the remainder of the war period. None the less, political cleavages always tended to reappear, and, as in England, a distinct parliamentary opposition gradually established itself. The principal element in this opposition was the Unified and Independent Socialists. As early as October, 1915, the socialist deputies, by withholding their support, caused the Viviani ministry to give way to a "ministry of all the talents" presided over by Briand — a ministry of twenty-three members (the largest in the history of the Third Republic) representing all parties, and including no fewer than six former premiers.[1] This ministry was almost constantly under the fire of Socialist and Radical Socialist deputies, who combated the tendency of the ministers and general staff to leave Parliament in the dark on the state of military operations and to expect from it instant compliance with whatever demands were made upon it. Harassed by frequent interpellations and votes of confidence, the Briand ministry broke up in the following December, although a new ministry with Briand at its head succeeded; and this second Briand war ministry managed to retain office until the spring of 1917.

It is interesting to note that the reorganization of December, 1916, which gave England a new sort of war cabinet, greatly reduced in size, had a close parallel in France. When reconstructing his ministry in the month mentioned, Briand reduced the membership from twenty-two to ten by omitting ministers without portfolio and by abolishing certain portfolios and combining others, and also placed the ultimate responsibility for the conduct of the war in a subdivision of the cabinet known as a "war council," consisting of the premier and the ministers of foreign affairs, finance, war, marine, and armament and war industries. The experiment was not notably successful, although it was wrecked rather by the maladroitness of the new war minister, General Lyautey, in dealing with Parliament than by any defects of the system itself.

Unable to command united support, the second Briand war ministry resigned, in March, 1917, and was succeeded by a ministry presided over by the veteran cabinet officer Ribot, and representing all elements except certain portions of the Right. The Socialists gave their adherence. None the less, they continued to be censorious, and in the autumn of 1917 they precipitated

[1] Briand took the portfolio of foreign affairs. There were five ministers without portfolio.

a fresh series of cabinet upsets. First, the Ribot ministry was overthrown, in September, as a result of exposures involving the Radical Socialist minister of the interior Malvy. Two months later a ministry organized by the former war minister Painlevé, which the Socialist deputy Thomas declined to enter, was similarly toppled over by debates on the war scandals.[1] The accession of the ministry of Clemenceau at this juncture, however, restored the political equilibrium, although several important elements were not represented in it; and notwithstanding repeated assaults upon it, this ministry survived the war, the armistice, and the peace negotiations, and retired only in January, 1920, after the parliamentary and presidential elections had indicated that its days of usefulness were past. It was therefore one of the two or three most long-lived ministries under the Third Republic. The succeeding cabinet, with Millerand as premier, is in office at the date of writing (June, 1920).[2]

Party Reorganization, 1918–20: the Elections of 1919. — By suspending party activities and binding all elements together in a *union sacrée*, dedicated to the defense of the country, the war theoretically crystallized and perpetuated the party alignments which existed in 1914. At all events, the formation of new parties was banned, and the presumption was created that after the conflict was over Action Libérale, Radicals, Radical Socialists, and Unified Socialists would resume their programs and conflicts on the customary lines. Had the war been a brief affair, this presumption would probably have proved well founded, although of this it is, of course, impossible to be sure. But the prolongation and severity of the struggle created a state of the public mind wholly unfavorable to the recrudescence of the old party situation. The agonizing experiences of war and the baffling problems of peace made former party strife appear petty, and even sordid. The overthrow of able ministries and the costly interruptions of vital public business produced by outbursts of party feeling created disgust. The failures, the delays, the scandals, brought discredit on the former political life and on the professional politicians, and prompted a desire for political activity of a new, freer, and more elevated kind. So

[1] It should be added that few of the ministries that resigned during the war period did so because they could not command a majority in the Chamber of Deputies. As a rule, they preferred to retire when the opposition became so formidable as to impede or embarrass the government in the conduct of the war, without waiting for a formal repudiation by the Chamber.

[2] The successive ministries of the war period are characterized in M. Laurent, "Nos gouvernements de guerre," in *Grande Rev.*, July, Aug., Sept., 1919.

long as hostilities continued, little or nothing tangible came of this feeling. But when, after the armistice, a nation-wide tourney of elections — parliamentary, departmental, and communal — began to loom up, the new attitude found immediate and practical modes of expression.

In the first place, the old parties, realizing the discredit into which they had fallen, strove to refurbish their programs and to adapt themselves to the new state of the public mind, in the hope of holding their ground at the forthcoming elections. In this they were but indifferently successful; and at least one of them, the Radical Socialist party, dissolved and practically disappeared in the process. This party had never been in full agreement on more than one important principle, *i.e.*, anti-clericalism; and now that the main fight against clericalism was over, the party had become a mere group of professional politicians. Unable to act together in allying themselves with some more hopefully situated group, its members lost touch and scattered in all directions.[1] The Unified Socialists were more successful than the rest in regaining their old position, and in building up an impressive morale; although the extremists' avowals of sympathy with bolshevism and the steady succession of strikes by whose means the trade-unions sought to establish " the dictatorship of the proletariat " cost the party much support.

No less important than the efforts of the old parties to rehabilitate themselves was the organization, after the armistice, of sundry new parties and coalitions. Of these, four attained some distinction. One was the *Démocratie Nouvelle* (" New Democracy "), which attacked the alleged encroachments of Parliament on the president and ministers, called for complete separation of legislative and executive powers, urged greater simplicity and directness in government, denounced bolshevism, and preached a new uprising of democratic energy. The second was a party which called itself the " Fourth Republic," and whose cardinal tenet was " regionalism," *i.e.*, the reorganization of government and administration, of transport and tariff regulation, and indeed of substantially all political and economic life, on a decentralized, regional basis. The other two new parties were associations or confederations, loosely organized with a view to bringing together elements drawn from very diverse sources. One — the *Bloc National Républicain* — is a com-

[1] The dissolution was made the more complete by the discredit which the party suffered from the fall and disgrace of its two principal leaders in the war period. Caillaux and Malvy. See p. 464.

bination of Republicans ranging in degree of conservatism from the Radical Socialists (many of whom have identified themselves with the new *bloc*) to the *Action Libérale*, and it stresses anti-bolshevism, social order and preservation, secularization of education, maintenance of the *union sacrée*, and support of the League of Nations. The other group, the *Union Républicaine et Démocratique*, was intended by its founders to be not merely a federation of the parties of the Left, but a great national democratic party equally opposed to bolshevism and to reaction. Finding a portion of its field preëmpted by the *Bloc National*, it has pushed its center of gravity farther toward the Extreme Left than was originally planned. It remains quite separate from the Unified Socialist party. But it finds the ground which is left for it to occupy between that occupied by the Unified Socialists and that taken by the *Bloc National* decidedly cramped.

The new electoral law[1] was placed on the statute book in July, 1919, and, notwithstanding the demand of Briand and other public men that the people be given more time in which both to familiarize themselves with the new method of voting and to study the questions before the country, the election of a new Chamber of Deputies was set for November 16. In view of the multiplicity and confusion of parties, new and old, it was difficult to discern any single clear issue in the contest except, in a general way, that between the supporters and the opponents of bolshevist-tinged, revolutionary socialism. On this fundamental question the nation spoke with no uncertain voice. It inflicted a severe defeat upon the Socialists of all stripes, especially the revolutionary Unified party, and it proportionately reënforced the more conservative sections of the Chamber's membership. The Socialists went into the contest divided among themselves, and although they polled some 1,700,000 votes, as compared with 1,400,000 in 1914, they suffered a net loss of about forty seats. It is said that a large section of the proletariat abstained from voting on anti-parliamentarist grounds. However that may be, sufficient explanation of the Socialist reverse is found in the unprecedented coöperation of the conservative elements, mainly through the medium of the *Bloc National*. It is true that the opponents of socialism failed in most of the constituencies to follow the admonition sent out from Paris to put only one list of candidates in the field and to mass their strength on this list; as a rule, at least two or three

[1] See pp. 424–427.

lists were offered by different Republican groups in a department. But, even so, it is universally agreed that the Socialists fared worse under the new system of voting than they would have under *scrutin uninominal*. In the four constituencies into which Paris was divided they secured only ten seats out of a total of fifty-four.[1]

In summary, the salient facts in the party situation at the date of writing are: (1) the superimposition of the new groupings that have been mentioned upon the party divisions of 1914, obscuring them without entirely blotting them out or necessarily in all cases superseding them; (2) the virtual disappearance, at least temporarily, of the Radical Socialist party; (3) an accentuated tendency of organized socialism toward revolutionism, including bolshevism; and (4) an increased readiness on the part of the less radical elements to combine in the defense of the present political and social order against those who would overthrow it. It would be futile to attempt to forecast the further developments that a decade, or even a single year, may bring.

General Aspects of French Party Politics. — From the foregoing account it is manifest that political parties of the sort with which Americans and Englishmen are familiar do not exist in France. Certain fundamental *tendencies* exist — reactionary, moderate, radical, socialist, syndicalist; and it is they, rather than formal party organizations, that endure from year to year and from decade to decade. The groups that spring up around some inspiring leader, and for a time give these tendencies expression, dissolve almost as readily as they form. They exist rather in Parliament than in the nation, and are apt to take shape rather after a parliament has come into session than before. Between sessions — and yet more, between quadrennial elections — the political scene may change completely. Deputies and senators pass readily from one group to another, sometimes belonging to two simultaneously; and the groups show hardly more stability in their affiliations one with another than in their internal composition and organization. Aside from the Unified Socialists, and perhaps the *Action Libérale*, party organization and party discipline throughout the country can hardly be said

[1] P. Bureau, "Les élections," in *Rev. Hebdom.*, Nov. 1, 1919; T. Baines, "The French Elections," in *New Europe*, Nov. 27, 1919; A. Pauphilet, "The French Socialists," *ibid.*, Feb. 12, 1920. A full statistical account, with an exposition of the new electoral law, will be found in G. Lachapelle, *Les élections générales du 16 Novembre 1919* (Paris, 1920). It may be added that in the senatorial elections of January, 1920, the Socialists won their first seat in the upper chamber.

to exist. Candidates for Parliament announce themselves, or are announced by their friends; they make their own platforms and conduct their own campaigns. Occasionally a great issue, such as clericalism, dominates in an electoral contest to such a degree that the will of the nation can be clearly tested. But as a rule the issues are so numerous, localized, personal, and confused that a study of the electoral returns leaves only a blurred impression. This was eminently true of the elections of 1910, and scarcely less so of those of 1914 and 1919. Nor is there anything to indicate that the English or American forms of party organization and morale will ever grow up.

No complete explanation of the nebulous and shifting character of French party alignments has ever been propounded. Certain reasons for it, however, are perfectly clear. The first is the historical condition under which the party system of the Third Republic had its beginning. Writing twenty years ago, when a situation that no longer exists was still a reality, the historian Seignobos said: "Power cannot pass alternately, as in England and the United States, from the party on one side over to the party in opposition. This alternation, this game of see-saw between two opposing parties, which certain theorists have declared to be the indispensable condition of every parliamentary régime, does not exist, and has never existed, in France. The reason why is simple. If the party of the Right, hostile to the Republic, should come into power, the temptation would be too strong for them to maintain themselves there by establishing an autocratic government, which would put an end to the parliamentary régime, as in 1851. The electors are conscious of this tendency of the Conservatives, and will not run the risk of intrusting the Republic to them. When they are discontented with the Republicans in power, they vote for other Republicans. Thus, new Republican groups are being ceaselessly formed, while the old ones fall to pieces." [1]

A second important consideration is the tendency of the Frenchman to be theoretical rather than practical in his politics. "He is inclined," writes Lowell, "to pursue an ideal, striving to realize his conception of a perfect form of society, and is reluctant to give up any part of it for the sake of attaining so much as lies within his reach. Such a tendency naturally gives rise to a number of groups, each with a separate ideal, and each unwilling to make the sacrifice that is necessary for a fusion into a great party. In short, the intensity of political sentiment

[1] "The Political Parties of France," in *Internat. Monthly*, Aug., 1901, 155.

prevents the development of real political issues. To the Frenchman, public questions have an absolute rather than a relative or a practical bearing, and, therefore, he cares more for principles and opinions than for facts. This tendency is shown in the programs of the candidates, which are apt to be philosophic documents instead of statements of concrete policy, and, although published at great length, often give a comparatively small idea of the position of the author on the immediate question of the day. . . . The inability to organize readily in politics has this striking result, that vehement as some of the groups are, and passionate as is their attachment to their creeds, they make little effort to realize their aims by associating together their supporters in all parts of the country for concerted action." [1]

Finally, it may be pointed out that certain features of electoral and parliamentary procedure have always obstructed, or at all events have not promoted, the rise of stable parties. The *ballottage*, as employed prior to 1919, directly encouraged multiplicity of candidacies, and hence of party groups. The committee system (in so far as standing committees chosen by the respective chambers have not been instituted) interferes with the control of the cabinet over legislation and hinders the growth of party responsibility. The practice of interpellation is ruinous to ministerial stability, and, therefore, to party equilibrium.[2]

[1] *Governments and Parties in Continental Europe*, I, 105–107.

[2] The best accounts in English of French parties and party conditions — although written long ago — are Lowell, *Governments and Parties*, I, Chap. ii, and Bodley, *France*, II, Bk. iv, Chaps. i–viii. The principal French treatise is Jacques, *Les partis politiques sous la iii^e république*, which includes in an appendix the official rules and platforms of the groups as they stood at the time of publication (1913). Useful articles include C. Seignobos, "The Political Parties of France," in *Internat. Monthly*, Aug., 1901; C. Dawbarn, "Patriotism and Party in France," in *Fortn. Rev.*, Aug., 1913; J. Méline, "Les partis dans la république," in *Rev. Polit. et Parl.*, Jan., 1900; M. H. Doniol, "Les idées politiques et les partis en France durant le xix^e siècle," in *Rev. du Droit Public*, May–June, 1902; A. Charpentier, "Radicaux et socialistes de 1902 à 1912," in *La Nouvelle Rev.*, May 1, 1912; and J. Reinach, "Political Parties in France," in *N. Y. Nation*, Dec. 14, 1918.

2. Italy

CHAPTER XXVIII

CONSTITUTIONAL DEVELOPMENT IN THE NINETEENTH CENTURY

Napoleonic Transformations — The master forces in the politics of Europe since the French Revolution have been the twin principles of nationality and democracy, and nowhere have these principles been more fruitful than in the long disrupted, inert, and misgoverned peninsula of Italy. The awakening of the Italian people to a new consciousness of unity and strength, and to a new aspiration and hope, may be said to date from the Napoleonic invasion of 1796; and the first stages of the *Risorgimento*, or "resurrection," belong to the period of French domination, which continued, speaking broadly, to the collapse of Napoleon's power in 1814. At the opening of this period the heavy hand of two foreign dynasties lay upon far the larger part of the country. The Austrian Habsburgs ruled the rich duchies of Milan (including Mantua) and Tuscany, and had a preponderating influence in Modena. The Spanish Bourbons, "the rotten branch of the most rotten trunk in the forest of European monarchies," held the duchy of Parma and the important kingdom of Naples, including Sicily. Of independent states there were six: the kingdom of Sardinia (including Piedmont, the island of Sardinia, and nominally Savoy and Nice), where alone in all Italy lingered some measure of native political vitality;[1] the Papal States, the petty monarchies of Lucca and San Marino, and the two venerable republics of Venice and

[1] "Here at least there was a national monarchy and a national nobility, though little else that can weigh in the scales of civilization; no art, or music, or science, or literature, or by-face any contribution to the splendid sum of Italian culture; ... and a provincial and superstitious using French as the language of polite society, and a patois more akin to Provençal than Italian as the simple converse of the people, a dour country folk as incomplete from itself, but possessing the virtue that belongs to a simple, virtuous and loyal community." Usher, *Reformation Tradition in Europe*, 144.

Genoa, now governed by close oligarchies, and long since shorn of their empires, their maritime power, and their economic and political importance. Absolutism reigned everywhere; and in most of the states, especially those of the south, absolutism meant both corruption and oppression.

During the two decades which covered the public career of Napoleon it fell to France to topple to the ground this archaic political order, to terminate the control of Austria and to substitute the authority of France, to plant in the peninsula a wholly new and revolutionizing set of political and legal institutions, and, quite unintentionally, to fan to a blaze a patriotic zeal which for generations had smoldered almost unobserved. The beginning of these transformations came as a direct result of the Napoleonic incursion of 1796. One by one, upon the advance of the victorious French, were detached the princes who, under English and Austrian tutelage, had been allied against France. The king of Naples sought an armistice; the Pope made peace; at Arcole and Rivoli the Austrian power was shattered. With the approval of the conqueror, a Cispadane Republic, including Modena, Reggio, Ferrara, and Bologna, was proclaimed, on October 16, 1796; and five months later a constitution was promulgated, which, having been adopted by representatives of the four districts, had also been ratified by a vote of the people. This constitution — the first in the history of modern Italy — was modeled upon the French instrument of 1795. It provided for a legislative council of sixty members, with exclusive power to propose measures, another of thirty members, with power to approve or reject measures, and an executive directory of three, elected by the legislative bodies.

Results in Lombardy were similar. Early in 1797 four commissions, appointed by Napoleon, worked out a constitution which likewise reproduced all of the essential features of the French model; and in mid-summer the Transpadane Republic was inaugurated, with brilliant ceremony, at Milan. Provision was made for a directory and for two legislative councils consisting of one hundred sixty and eighty members respectively; and the first directors, representatives, and other officials were named by Napoleon. Almost immediately, however, and at the solicitation of the Cispadanes, the two republics were united; and to the combined commonwealth was given the name Cisalpine Republic.[1] Already the helpless Venetian republic had been

[1] The Cisalpine constitution was amended September 1, 1798, when the French system of administrative divisions was introduced.

crushed; and when, in the treaty of Campo Formio (October 17, 1797) Austria was brought to the point of recognizing the new Cisalpine state, she was compensated in a measure by being awarded the major part of the Venetian territories, including the city of Venice.[1]

In the meantime, too, Genoa had been reorganized. The ruling oligarchy, driven from power by Napoleon, gave place to a moderately democratic government, legislative functions being intrusted to two popularly elected chambers, while the executive power was vested in a doge and twelve senators; and the new commonwealth, French in everything but name, became known as the Ligurian Republic. The Ligurian constitution was ratified by the people December 2, 1797. During the ensuing winter the French Directory, now openly hostile to the papacy, busily encouraged the democratic party at Rome to overthrow the temporal power and to set up an independent republic; and in February, with the aid of French arms, the democrats secured the upper hand, assembled in the Forum, declared for the restoration of the old Roman republic, and elected as head of the new state a body of seven consuls. The aged pontiff, Pius VI, was maltreated and eventually transported to France. For this new Tiberine, or Roman, Republic was promulgated a constitution providing for the customary two councils — a Senate of thirty members and a Tribunate of sixty — and a directory, now christened a consulate, consisting of five consuls elected by the councils. In less than another year (January 23, 1799), following an armed clash between the French and the Neapolitan sovereign, Ferdinand IV, Naples was taken and the southern kingdom was converted into the Parthenopæan Republic. Here, too, a constitution was promulgated, providing for a directory of five members, a Senate of fifty, with exclusive right of legislative initiative, and a Tribunate of one hundred twenty.[2]

The Monarchical Reaction. — While Napoleon was occupied with the Egyptian expedition the armies of France suffered repeated reverses in Italy, and by the end of 1799 everything seemed about to be lost. In the campaign which culminated at Marengo, however, the conqueror not only clinched his newly won position in France but brought Italy once more to his feet. Under the terms of the treaty of Lunéville (February 9, 1801)

[1] E. Bonnal de Ganges, *La chute d'une république* (Paris, 1885).

[2] For an interesting account of the workings of republican idealism in the Neapolitan republic see Fisher, *Republican Tradition in Europe*, 150–157.

Austria recognized the reconstituted Cisalpine and Ligurian republics, Modena and Tuscany reverted to French control, and French ascendancy elsewhere was securely established; and in 1802 Piedmont was organized in six departments and incorporated in the French Republic. During the winter of 1802–03 the constitutions of the Cisalpine and Ligurian republics were remodeled in the interest of that same autocratic domination which was now fast ripening in France. In each republic were established, at first, three bodies — an executive *consulta*,[1] a legislature of 150 members, and a court — which were chosen by three electoral colleges comprising (1) the *possidenti*, or landed proprietors, (2) the *dotti*, or scholars and ecclesiastics, and (3) the *commercianti*, or merchants and traders; but the legislature could be completely overridden by the *consulta*, and the *consulta* was little more than a tool of Napoleon.[2] Within a year the new constitutions proved more democratic than was desired, and in each case the legislative body was replaced by a senate of thirty members presided over by a doge.

The plain stipulation of the treaty of Lunéville that the Italian republics should remain independent of France was practically disregarded. Politically and commercially, they were actual dependencies; and, following the proclamation of the French empire (May 18, 1804), the fact was openly admitted. To Napoleon, furthermore, it seemed incongruous that an emperor of the French should be a patron of republics. He had no deep concern for Italian liberty. Besides, he well knew how ill-equipped the Italians were for self-government; upon one occasion he observed to the Directory that there was less material for the building of republics in Italy than there was in France. Gradually, therefore, a plan was formed for the conversion of the Italian Republic into a tributary kingdom. Napoleon's first idea was that his eldest brother, Joseph, should occupy the throne of this kingdom. But Joseph, not caring to imperil his chances of succession in France, demurred, as did also his younger brother, Louis. The upshot was that, under a constitutional statute of March 17, 1805, the Emperor caused himself to be called to the throne of Italy; and a few weeks later, in the cathedral at Milan, he placed upon his own head the iron crown of the old Lombard kings. The sovereign's step-son, Eugène Beauharnais, was appointed regent. In June of the same year, in response to a petition which Napoleon himself instigated, the Ligurian Republic was pro-

[1] An advisory council of state, consisting of eight members.
[2] The Cisalpine Republic was now renamed the Italian Republic.

claimed an integral part of the French Empire; and the annexation of Parma and Piacenza promptly followed.

Against the coalition of Great Britain, Russia, Austria, and Naples, which was directly prompted by the Ligurian annexation, Napoleon was completely successful. In the treaty of Pressburg, December 26, 1806, Austria ceded to the Italian kingdom her portion of Venetia, together with the provinces of Istria and Dalmatia. Following a vigorous campaign conducted by Joseph Bonaparte, the restored Bourbon family was again driven from Naples, whereupon Joseph allowed himself to be established there as king. In 1808 he was succeeded by Napoleon's ambitious marshal and brother-in-law Murat. From Bayonne, Joseph issued a constitution for his former subjects, providing for a council of state of from twenty-six to thirty-six members and a single legislative chamber of one hundred members, of whom eighty were to be named by the king and twenty were to be chosen by electoral colleges. Not until 1815, however, and then for only a few weeks, was this instrument actually in operation. Finally, the papal territories were brought under complete control. Following prolonged friction with the Pope, Napoleon first of all (April 2, 1808) annexed to the kingdom of Italy the papal march of Ancona and the duchies of Urbino, Macerata, and Camerina, and then (by decrees of May 17, 1809, and February 17, 1810) added to the French empire Rome itself and the *Patrimonium Petri*.

Thus was the entire peninsula, for the first time since the age of Justinian, brought under what was in fact, if not in name, a single governing power. To the whole was extended the *Code Napoléon* and the new French administrative system; and public works, measures for elementary and higher education, and social reforms were undertaken, such as in France itself proved the most enduring and salutary features of the Napoleonic régime. There was not time for the new order to strike root deeply; and when the wave of French conquest receded, a reaction set in which overwhelmed many of the new institutions and enterprises. None the less, the *Code Napoléon* lies at the basis of Italian law to-day; the Italian system of local government and administration is almost a duplicate of the French;[1] the French impress is in evidence throughout the entire political system, although dating, of course, by no means exclusively from the Napoleonic domination. Most important of all, the Italians had been given a new political vision. "When," says a leading English student of

[1] See p. 537.

free institutions, " a political settlement has become hardened by prescription, even the most transient disturbance of it is a fact of moment. It dislocates the traditional mode of thinking and breaks the hard crust of usage. Even if the old order be restored, the restoration is never quite exact. It cannot reproduce a state of feeling of which one of the essential conditions was the bare fact of unbroken continuity. The old furniture may be replaced, but it is viewed not as a fixture but as a movable; and questions arise as to whether it looks well in its former position. So it was with the short-lived Italian republics. . . . Ephemeral as they were, and the creatures of military coercion and financial greed, they broke an old tradition and started a new one." [1]

Italy in 1815. — If the rise of French power in Italy was brilliant, the collapse — following hard upon Napoleon's Russian campaign and the defeat at Leipzig — was swift and complete. The final surrender was made April 16, 1814, by the viceroy Beauharnais; whereupon the Austrians resumed possession in the north, the Bourbons in the south, and the whole problem of permanent adjustment fell to the congress of the powers at Vienna. The "Final Act" of this gathering, dated June 9, 1815, left the country in such a condition that Metternich could truthfully refer to the name Italy as being merely " a geographical expression." The political map was redrawn so as to be practically, although not in every detail, what it was in 1796. Ten states reappeared, as follows: the kingdom of Sardinia, Lombardo-Venetia, Parma, Modena, Lucca, Tuscany, Monaco, San Marino, the kingdom of Naples, and the States of the Church. To the kingdom of Sardinia, reconstituted under Victor Emmanuel I, France retroceded Nice and Savoy; and to it was added also the former republic of Genoa. Lombardo-Venetia, comprising the duchy of Milan and all of the continental possessions of the former Venetian republic, including Istria and Dalmatia, was given to Austria.[2] Tuscany was restored to the grand-duke Ferdinand III of Habsburg-Lorraine; the duchy of Modena went to Francis

[1] Fisher, *op. cit.*, 149–150. For brief accounts of the Napoleonic régime in Italy see *Cambridge Modern History*, IX, Chap. xiv, and B. King, *History of Italian Unity* (London, 1899), Chap. i. Special treatises include P. Gaffarel, *Bonaparte et les républiques italiennes, 1796-1809* (Paris, 1895); A. Dufourcq, *Le régime jacobin en Italie, 1796–1799* (Paris, 1900); F. Lemmi, *Le origini del risorgimento italiano* (Milan, 1906); G. Savini, *I primi esperimenti costituzionali in Italia, 1797–1815* (Turin, 1911); and R. M. Johnston, *The Napoleonic Empire in Southern Italy*, 2 vols. (London, 1909).

[2] A decree of April 24, 1815, erected these territories into a kingdom under Austrian control, although with a separate administration.

IV, son of the archduke Ferdinand of Austria; Parma and Piacenza were assigned to Maria Louisa, daughter of the Austrian emperor, and wife of Napoleon; the duchy of Lucca fell to Maria Louisa of Bourbon-Parma. In the south, Ferdinand IV of Naples, restored to all of his former possessions, was recognized under the new title of Ferdinand I. Finally, Pope Pius VII recovered the whole of his temporal dominion.

Two facts about this arrangement are obvious. The first is that not even a semblance of national unity remained. The second is that Austria was now almost, if not quite, as preponderant as France had been in the previous decade. Lombardo-Venetia was Austrian territory; Tuscany, Modena, and Parma were ruled by Austrian princes; Ferdinand of Naples was an Austrian ally, and he had pledged himself not to introduce in his domain principles of government incompatible with those employed by the Austrians in the north; even Victor Emmanuel of Sardinia — the only important native sovereign, aside from the Pope, in the peninsula — was pledged to a perpetual Austrian alliance.[1]

"Italy," wrote Napoleon some time after his banishment to St. Helena, "isolated between her natural limits, is destined to form a great and powerful nation. Italy *is* one nation; unity of language, customs, and literature, must, within a period more or less distant, unite her inhabitants under one sole government. And, without the slightest doubt, Rome will be chosen by the Italians as their capital."[2] When this prophecy was written the unification of Italy appeared the most improbable of events. It was, none the less, impending; and Napoleon himself made large contribution to it. In the words of a recent writer, "the brutalities of Austria's white coats in the north, the unintelligent repression then characteristic of the house of Savoy, the petty spite of the duke of Modena, the medieval obscurantism of pope and cardinals in the middle of the peninsula, and the clownish excesses of Ferdinand in the south, could not blot out from the minds of the Italians the recollection of the benefits derived from the just laws, vigorous administration, and enlightened aims of the great emperor. The hard but salutary training which they had undergone at his hands had taught them that they were the equals of the northern races both in the council chamber and on the field of battle. It had further revealed to them that truth, which once grasped can never be forgotten, that, despite differ-

[1] W. R. Thayer, *Dawn of Italian Independence* (Boston, 1893), I, 116–178.
[2] M. Cesaresco, *The Liberation of Italy* (London, 1895), 3.

ences of climate, character, and speech, they were in all essentials a nation."[1] It is not too much to say that Napoleon sowed the seed of Italian unity.

Mid-Century Revolutions and Constitutionalism. — From 1815 to 1848 Austrian influence, shaped mainly by Metternich, was everywhere reactionary; and during this prolonged period there was not a government in Italy that was not of the absolute type. No one of the states had a constitution, a parliament, or any sort of popular political procedure. In 1820 Ferdinand of Naples was compelled by a revolution to promulgate a constitution identical with that forced in the same year upon Ferdinand VII of Spain. This ready-made instrument provided for a popularly elected parliament of one chamber, upon which were conferred large powers; a council of state composed of twenty-four members to advise the king; an independent judiciary; and a parliamentary deputation of seven members elected by the parliament, whose duty it was, in the event of the dissolution of parliament, to see that the terms of the constitution were properly complied with. In 1821 revolution broke out also in Piedmont; and after the mild-tempered king, Victor Emmanuel, abdicated in favor of his brother, Charles Albert, a temporary regent, the Prince of Carignano, under pressure, conceded to the people a duplicate of the Spanish fundamental law. In both Naples and Piedmont, however, the liberal movement entirely failed. The reformers lacked unity of purpose, and when, under authorization of the continental powers, Austria intervened, every gleam of constitutionalism was promptly snuffed out. Similarly, in 1831–32, there was widespread insurrection in Modena, Parma, and the Papal States, and with rather more evidence of a growing national spirit; but again, with Austrian assistance, the outbreaks were suppressed.[2]

The turning point came with the great year of revolution, 1848. During the intervening period the ground was systematically prepared by propaganda, in which Mazzini's "Young Italy" led, for the *risorgimento* upon which the patriots and the prophets had set their hearts. In 1846 a liberal-minded pope, Pius IX, instituted a series of reforms; and the example was forthwith followed by the princes of Piedmont (Sardinia) and Tuscany. In January, 1848, revolution broke out afresh in Naples,

[1] J. Holland Rose, in Encyclopædia Britannica (11th ed.), XV, 48. See also Fisher, *Republican Tradition in Europe*, 158–159.

[2] *Cambridge Modern History*, X, Chap. iv; Johnston, *Napoleonic Empire in Southern Italy*, II, Chap. iv; Thayer, *Dawn of Italian Independence*, I, 215–278.

and within a month Ferdinand II was obliged, like his father in 1820, to yield to public demand for a constitution. The new instrument, promulgated February 10, provided for a legislative body consisting of a chamber of peers, appointed for life by the king, and a chamber of deputies, elected by the people. Five days later the sovereign of Tuscany, Leopold II, granted to his subjects a constitution of similar character, making provision for a complete representative system.

Meanwhile the municipality of Turin, voicing a demand supported by many nobles and high officials of state, petitioned Charles Albert of Piedmont to grant a constitution. The matter was given serious thought, and on February 7 the sovereign announced in a long discourse to a gathering of ministers and magistrates his conviction that the safety of the kingdom, the monarchy, and religion demanded a more popular form of government. A public proclamation was issued the following day, and a commission was appointed to draft a constitution. The French charter of 1830 was taken as a model, and the task was soon completed. On March 4 the king was able to promulgate an instrument — the *Statuto fondamentale del Regno* — which, with no changes of text whatsoever, has survived to the present day as the constitution of the united Italian kingdom.[1] Already news of the overthrow of Louis Philippe, of the uprising in Germany, and of the fall of Metternich had plunged the entire country in insurrection. Under popular pressure the Pope and the king of Naples sent troops to aid the northern states in the liberation of the peninsula from Austrian despotism, and for a time, under the leadership of the Piedmontese monarch, Charles Albert, all Italy seemed united in a broadly nationalistic movement. On July 10 a new and extremely liberal constitution was adopted by a constituent assembly in Naples; and on February 9, 1849, following a clash between the Pope and the recently established Roman parliament, the temporal power of the papacy was once more swept away and Rome, under an appropriate constitution, was proclaimed a republic.[2]

The reaction, however, was swift and apparently little short of complete. At the earliest possible moment the king of Naples withdrew from the war, revoked the constitution which he had granted, and put the forces of liberalism to rout. With the assist-

[1] The nature of the governmental system provided in this instrument will be explained at length in the succeeding chapter.

[2] G. Garavani, *La costituzione della repubblica romana nel 1798 e nel 1849* (Fermo, 1910).

ance of France, Austria, and Naples, the Pope extinguished the Roman republic and re-established the temporal power in all its vigor. Austrian arms crushed one after another of the insurrectionary states in the north and center, and Austrian influence in that quarter rose to its former degree of ascendancy. Constitutionalism gave place to absolutism, and the liberals, disheartened and disunited, were driven to cover. Only in Piedmont, whose sovereign, after the bitter defeat at Novara, abdicated in favor of his son, Victor Emmanuel II (March 23, 1849), remained any vestiges of political independence or civil liberty.[1]

National Unity Achieved. — To all inducements to abrogate the constitution which his father had granted Victor Emmanuel remained deaf, and the logic of the situation began to point unmistakably to Piedmont as the hope of the patriotic cause. After 1848 the building of the Italian nation becomes, indeed, essentially the story of Piedmontese organization, leadership, conquest, and expansion. Victor Emmanuel, honest and liberal-minded, was not a statesman of the first rank, but he had the wisdom to discern and to rely upon the statesmanship of one of the most remarkable ministers in the history of modern Europe, Count Cavour. When, in 1850, Cavour entered the Piedmontese ministry he was already known as an ardent advocate of both constitutionalism and national unification; and after, in 1852, he assumed the premiership he was allowed practically a free hand in prosecuting policies designed to contribute to a realization of these ends. The original purpose of the king and of his minister was to bring about the exclusion of Austrian influence from the peninsula and to organize the various states into a confederacy under the nominal headship of the Pope, but under the real leadership of the sovereign of Piedmont. Ultimately the object became nothing less than unification of the entire country under the control of a centralized, national, temporal government.

In 1855 Cavour signed an offensive and defensive alliance with France, and in 1859 his country, with the connivance of its ally, went to war with Austria. According to an understanding arrived at by Cavour and the Emperor Napoleon III at Plombières (June 20, 1858), Austria was to be expelled absolutely from

[1] Full accounts of the revolution of 1848 in Italy are given in King, *History of Italian Unity*, I, Chaps. ix–xix, and Thayer, *Dawn of Italian Independence*, II, Bks. iv–v. A good brief survey is *Cambridge Modern History*, XI, Chap. iv (bibliography, pp. 908–913). A suggestive sketch is Fisher, *Republican Tradition in Europe*, Chap. ix.

Italian soil; Lombardo-Venetia, the smaller duchies of the north, the papal Legations, and perhaps the Marches, were to be annexed to Piedmont, the whole to comprise a kingdom of upper Italy; Umbria and Tuscany were to be erected into a kingdom of central Italy; the Pope was to retain Rome, and Ferdinand Naples; and the four states thus constituted were to be formed into an Italian confederation. In the contest that ensued the Austrians were defeated. Their only immediate loss, however, was the ancient duchy of Lombardy, which, under the terms of the treaty of Zürich, was annexed to Piedmont.[1] Years before (June 8, 1848), a Lombard plebiscite upon the question of such annexation had brought out an affirmative vote of 561,002 to 681.

The gain arising from the annexation of Lombardy was in a measure offset by the cession of Savoy and Nice to France, in conformity with an agreement entered into before the war. In point of fact, none the less, the benefits accruing to Piedmont from the Austrian war were enormous. Aroused by the vigor and promise of Piedmontese leadership, a large portion of central Italy broke into revolt and declared for union with Victor Emmanuel's dominion. In September, 1859, four assemblies, representing the grand-duchy of Tuscany, the duchies of Modena and Parma, and the Romagna (the northern portion of the Papal States), met at Florence, Modena, Parma, and Bologna, respectively, and voted unanimously for incorporation with Piedmont. In the following March the alternatives of annexation and independence were submitted to the inhabitants of each district. All adult males were allowed to vote. The result was an aggregate of 792,577 affirmative votes in a total of 807,502; and under authority conferred by the Piedmontese parliament, the king formally proclaimed the annexations. Deputies were forthwith elected to represent the provinces, and on April 2, 1860, the enlarged parliament was convened at Turin. Within the space of a year the population of the kingdom had been more than doubled. It was now eleven millions, or approximately half the population of the entire peninsula.

Meanwhile the Piedmontese program had been broadened to involve unification of the entire country. With amazing rapidity the task was carried toward completion. Aided by Garibaldi and his famous "Thousand," the people of Sicily and Naples expelled their Bourbon sovereign; and at a plebiscite of October 21, 1860, they declared, by a vote of 1,734,117 to 10,979, for an-

[1] King, *History of Italian Unity*, II, Chap. xxvii.

nexation to Piedmont. At the same time Umbria and the Marches were occupied by the Piedmontese forces, leaving to the Pope nothing save the Eternal City and a bit of territory immediately surrounding it. By votes of 97,040 to 380 and 133,077 to 1212, respectively, these districts declared for annexation; and on December 17, 1860, a royal decree announced their final incorporation, together with that of Naples. On January 27, 1861, general elections were held, and three weeks later the new and enlarged parliament met at Turin. Its most important act was to proclaim the long desired and hard-won United Kingdom of Italy. Over the breadth of the new territories was extended the liberal *Statuto* granted to Piedmont by Charles Albert thirteen years earlier; and Victor Emmanuel II was acknowledged "by the grace of God and the will of the nation, King of Italy."[1]

It remained only to consolidate the kingdom and to annex the two important Italian districts, Venetia and Rome, which were yet in foreign hands. Venetia was acquired as a direct result of Italy's alliance with Prussia against Austria in 1866. A plebiscite following the enforced Austrian cession yielded a vote of 647,246 to 47 for annexation. The union was sanctioned by a decree of November 4, 1866, and ratified by a law of July 18, 1867. The acquisition of Rome was made possible four years later by the Franco-German war. The conviction had been ripening that eventually Rome must be made the kingdom's capital; and when, in 1870, the garrison which France had maintained in Italy for the protection of the papacy since 1849 was withdrawn, the opportunity was seized to follow up fruitless diplomacy with military demonstrations. On September 20 the troops of General Cadorna forced entrance into the city, and the Pope was compelled to capitulate. On October 2 the people declared, by a vote of 133,681 to 1507, for annexation; on October 9 the annexation was proclaimed; and December 31 it was ratified by act of Parliament. The guarantees of independence to be extended to the papacy were left to be determined in a subsequent statute.[2] Under act of February 3, 1871, the capital of the kingdom — already, in 1865, transferred from Turin to Florence — was removed to Rome; and in the Eternal City, in the ensuing November, was convened the eleventh parliament since the revolution of 1848, the fourth since the

[1] King, *History of Italian Unity*, II, Chaps. xxix–xxxii.

[2] The resulting measure, the Law of Papal Guarantees, was enacted May 13 1871. See p. 540.

proclamation of the kingdom of Italy, the first since the completion of Italian unity.[1]

The Constitution. — The written constitution of the kingdom of Italy to-day is the *Statuto fondamentale del Regno* granted March 4, 1848, by Charles Albert to his Piedmontese subjects. In origin it therefore belongs with the large group of mid-century constitutions which were not framed by popular bodies, but were rather made and handed down to the people by the sovereign. Its promulgation came, however, in direct response to popular demand, and it was drawn on exceptionally enlightened and liberal lines. Furthermore, when the time came to annex to Piedmont the broad Italian lands to the east and south, and so to build the modern Italian kingdom, the *Statuto* was extended over them only after the populations had been given an opportunity to say whether they desired to come under the government for which the instrument provided. Plebiscites of 1859 in Lombardy, of 1860 in Emilia, Tuscany, the Neapolitan provinces, Sicily, Umbria, and the Marches, of 1866 in Venetia, and of 1870 in Rome, gave the constitution an essentially popular basis.

Granted originally as a royal charter, the *Statuto* contained no provision for its own amendment. In a sense, none was needed; for, in theory at all events, the power that granted it could modify it, or even withdraw it altogether. Practically, however, the case was different. Prior to 1848 the king of Piedmont, like all Italian monarchs, was a ruler of unrestricted authority. But in granting the *Statuto* he relinquished the larger part of his power. He became a king subject to the restrictions of a written constitution, a national parliament, and a cabinet system; the *Statuto* became a solemn contract between king and people, voluntarily instituted indeed by the former, but accepted none the less as

[1] For a brief account of the final stages in the unification of Italy see *Cambridge Modern History*, XI, Chaps. xiv, xix. The best presentation of the entire subject is King, *History of Italian Unity, 1814–1871*. Other useful books are W. J. Stillman, *The Union of Italy, 1815–1895* (Cambridge, 1898); J. Probyn, *Italy, 1815–1878* (London, 1884); M. Cesaresco, *The Liberation of Italy* (London, 1895); P. Orsi, *L'Italia moderna* (Milan, 1901); and E. Sorin, *Histoire de l'Italie depuis 1815 jusqu'à la mort de V. Emm.* (Paris, 1910). Among biographies may be mentioned G. Godkin, *Life of Victor Emmanuel II* (2d ed., London, 1880); M. Cesaresco, *Cavour* (London, 1898); D. Zanichelli, *Cavour* (Florence, 1905); B. King, *Mazzini* (London, 1902). A very valuable biography, which is practically a history of the period 1848–61, is W. R. Thayer, *Count Cavour*, 2 vols. (Boston, 1911). The monumental Italian work is C. Tivaroni, *Storia critica del risorgimento italiano*, 9 vols. (Turin, 1888–97). The principal documentary collection is N. Bianchi, *Storia documentata della diplomazia Europea in Italia dall' anno 1814 all' anno 1861*, 8 vols. (Turin, 1865–72). Of great value are L. Chiala, *Lettere del Conte di Cavour*, 7 vols. (Turin, 1883–87), and D. Zanichelli, *Scritti del Conte di Cavour* (Bologna, 1892). For full bibliography see *Cambridge Modern History*, XI, 908–913.

binding and irrevocable. From this it follows, and was at once recognized, that the constitution is beyond the power of the king to alter. Rather, it was felt, even as early as 1848, that changes ought to be made only by a constituent assembly; and before the end of that year a law was passed providing for such a gathering, although as a result of the disastrous ending of the Austrian war the body never met.

No amending clause has ever been added, and the instrument stands to-day precisely as drawn in 1848. This does not mean that no change of the constitutional text could possibly be made. Constitutions are made for the people, not the people for constitutions; and there could be no question about the validity of any alteration made, let us say, by concurrent action of the two houses of Parliament and ratified by a popular vote. On more than one occasion formal amendments have been discussed, although, since none have proved imperative, none have been adopted. The reason why none have proved imperative is two-fold. In the first place, the terms of the instrument, while specific enough on matters of a permanent nature, such as the rights of citizens, are broad and general on matters, such as the composition of the legislative houses, that require more or less periodic readjustment. In the second place, the written constitution, rather more than is the case in some other countries, sets up merely the framework of the governmental system; the structure itself is built largely of custom and of ordinary legislation. Italian jurists are now substantially agreed that, as is so notably true in England, custom is a source of constitutional law; and by stages the opinion has become fixed that, as also in England, the political system can be modified by legislative act. In earlier times an effort was made to uphold the distinction between fundamental law and statute. But to-day this distinction is hardly recognized, and the parliament is practically as omnipotent as the English. The view commonly taken at present was stated by Crispi as early as 1881: "I do not admit the intangibility of the *Statuto*. Statutes are made to prevent governments from retrograding, not from advancing. Before us there can be nothing but progress. . . . If we retain immutable the fundamental law of the state, we desire immobility, and should throw aside all advances which have thus far been made by the constituted authorities. I understand that in the *Statuto* of Charles Albert nothing is said of revision, and this was prudent. But how should this silence be interpreted? It should be interpreted in the sense that it is not necessary to the Italian constitution that a constituent assembly

should be expressly convoked, but that Parliament in its usual manner of operation is always constituent and constituted. Whenever public opinion has matured a reform, it is the duty of Parliament to accept it, even though the reform may bring with it the modification of an article of the *Statuto*." [1]

In pursuance of this doctrine, Parliament freely enacts measures which, with clear intent, add to, subtract from, or otherwise alter the constitutional system in any particular whatsoever, and which become, to all intents and purposes, constitutional laws. Examples that at once suggest themselves are the law of 1865 regulating the organization of the judiciary, the Law of Papal Guarantees of 1871,[2] and the electoral laws of 1882, 1895, and 1912. Care has always been taken that such enactments shall be in accord with the public will, and in practice they are not likely to be brought to a final vote until the country has been given an opportunity to pass upon them at a general election. This is obviously in accord with the popular basis on which the constitution may now be said to rest. But there is no legal obstacle to prevent Parliament from going to any lengths independently in the modification of the governmental system; it might even alter the text of the *Statuto* itself.

Among written constitutions, the *Statuto* is notably brief, being almost exactly half as long as the Constitution of the United States. It is arranged in eighty-four articles and deals, successively, with the crown, the rights and duties of citizens, the Senate, the Chamber of Deputies, the ministers, the judiciary, and matters of a miscellaneous character. The bill of rights contained in Articles 24–32 guarantees equality before the law, liberty of person, inviolability of domicile and of property, freedom of the press, exemption from non-parliamentary taxation and, with qualifications, freedom of assembly. It cannot be too strongly emphasized, however, that, so overlaid is the *Statuto* with custom and with legislative enactment, that one cannot adequately apprehend the working constitution of the kingdom to-day, in respect to either principles or machinery, through an examination of this document alone. In the language of an Italian publicist, "the Italian constitution no longer consists of the Statute of Charles Albert. This forms simply the beginning of a new order of things. Many institutions have been transformed by laws, decrees, usages, and neglect, whence the Italian constitu-

[1] Quoted by G. A. Ruiz, "The Amendments to the Italian Constitution," in *Ann. of Amer. Acad. of Polit. and Soc. Sci.*, Sept., 1895, 38.

[2] See p. 540.

tion has become cumulative, consisting of an organism of law grouped about a primary kernel which is the *Statuto*."[1]

[1] Ruiz, "Amendments to the Italian Constitution," *loc. cit.*, 57. The text of the *Statuto* is printed in Lowell, *Governments and Parties*, II, 346–354. There is a French version in F. R. Dareste, *Les constitutions modernes* (Paris, 1883), I, 550–560. There is an English translation in Dodd, *Modern Constitutions*, II, 5–16, and another, by S. M. Lindsay and L. S. Rowe, in *Ann. of Amer. Acad. of Polit. and Soc. Sci.*, Nov., 1894. The most comprehensive work on Italian constitutional law is F. Racioppi and I. Brunelli, *Commento allo statuto del regno*, 3 vols. (Turin, 1909). Other valuable treatises are G. Arangio Ruiz, *Storia costituzionale del regno di Italia, 1848–1898* (Florence, 1898); E. Brusa, *Das Staatsrecht des Königreichs Italien* (Leipzig, 1892), in Marquardsen's *Handbuch;* E. del Guerra, *L'Amministrazione pubblica in Italia* (Florence, 1893); and, for briefer treatment, G. Mosca, *Appunti di diritto costituzionale* (Milan, 1908), and I. Tambaro, *Il diritto costituzionale italiano* (Milan, 1909).

CHAPTER XXIX

THE GOVERNMENTAL SYSTEM

The Crown. — Constitutional government in Italy had its origin in the liberal policies of the kings of Piedmont; and the country's unification was achieved under the astute leadership of one of these princes, and of his statesmanlike minister Cavour. In Venice, Genoa, and elsewhere, republicanism was a live tradition; indeed, the revolutionists whose dreams and deeds glorify the history of the *Risorgimento* were almost without exception men of republican sentiments. The circumstances of its creation plainly decreed, however, that the new state should be a monarchy; and in all subsequent stages of the country's development the crown has been a powerful and necessary unifying force. The throne is hereditary in the House of Savoy, which even before the Great War was by far the oldest reigning family in Europe.[1] Its descent is governed by the Salic law; that is, inheritance is exclusively by or through males. The monarch is declared sacred and inviolable in his person, and he enjoys a civil list of 16,050,000 lire ($3,210,000), of which, however, the sum of one million lire is annually repaid to the state. Since 1870 the royal residence has been the Palazzo del Quirinale, a palace which, on account of its elevated and healthful situation, was in earlier ages much frequented by the popes.

On paper, the powers of the crown are very extensive. In so far as they are exercised by the sovereign in person, they are, however, strictly limited, as is inevitably the case wherever monarchy is tempered with parliamentarism. In no continental country have the principles underlying the English cabinet system been more deliberately and more unreservedly accepted. In particular, the rule that the ministry shall constitute the working executive, and that it shall be continually responsible to the Chamber of Deputies, has been so long and faithfully observed that it is now regarded as an unalterable law of the con-

[1] Count Humbert of Savoy entered Middle European politics in the eleventh century under the patronage of the Emperor Conrad. On the present royal family see Underwood, *United Italy*, Chap. x.

stitution. It is, therefore, speaking strictly, not the king but the ministry that approves and promulgates the laws, grants pardons and commutes sentences, declares war, concludes treaties, issues ordinances, creates senators, and makes appointments to the offices of state.[1] The veto power nominally exists, but, as in other cabinet-governed countries, it is rarely or never used. If a cabinet cannot so control Parliament as to prevent the enactment of a measure to which it objects, it resigns and a new cabinet is made up which is in harmony with the legislative majority, and there is no veto. According to the constitution, treaties involving financial obligations or alterations of the territorial limits of the state require the sanction of the legislative chambers. In practice, international engagements of all kinds are submitted for approval, except military conventions and foreign alliances.

It must not be supposed, however, that the king has no actual influence or authority. His voice in foreign affairs carries much weight; he is personally the commander-in-chief of the armed forces, and not only may take, but has actually taken, the field at the head of the troops; he appoints the premier, and usually has large discretion in doing so; he occasionally attends and presides over cabinet meetings; and he retains such a degree of ultimate control over the ministers that he can dismiss them (and on a few occasions has done so) irrespective of their relations with the legislative houses. It goes without saying that he enjoys equally full rights to "advise, admonish, and warn" with other sovereigns under a cabinet system; and he is not in all matters bound to act upon the advice given him by his ministers. His actual power, therefore, considerably exceeds that of the king of England, being more closely comparable with that of the king of Belgium or of the president of France. No one of the three men who have occupied the throne of the United Kingdom has ever sought to establish a personal government. But as a consequence of their attractive qualities, their tact and common sense, the prestige of their house, and the openings for royal influence created by the confusion of parliamentary life, all have played an active and important rôle in the country's government. The present king, Victor Emmanuel III, has had the respect of all classes. There is a republican element, but it is not well organized or strong; so that, having weathered the storms that in many lands swept monarchy from its moorings

[1] Arts. 5–8. Dodd, *Modern Constitutions*, II, 5; Dupriez, *Les ministres*, I, 292–297.

during the Great War, Italian royalty seems likely to hold its own in the new era.

The Ministry: Composition and Organization. — Normally, the ministry consists of the heads of executive departments, of which there were at the close of the Great War fourteen, as follows: foreign affairs; war; marine; finance; treasury;[1] colonies; public instruction; public works; posts and telegraphs; justice and ecclesiastical affairs; commerce and labor; agriculture; public assistance and pensions; and transport and munitions. Occasionally a minister without portfolio was included before the war; during the conflict such members were freely added. The premier is named by the king; and, as has been stated, there is likely to be a considerable range of choice. There is not usually a recognized "leader of the opposition," who can forthwith be named when a ministry is to be made up, with full assurance of his acceptance and of his ability to organize a government. On the contrary, the situation is like that which confronts the president of France when he comes to perform a similar duty.[2] There are many parties and party groups; no one of them alone can command a parliamentary majority; every ministry must be a coalition; there may be a half-dozen, or more, political leaders who might conceivably head a new government; after one of them is intrusted with the task, he may not succeed in bringing together a group that will have the confidence of the chamber, and in that event some other person will have to be designated to make the attempt. The premier's colleagues are nominated by him to the king, by whom the appointments are officially made. To be eligible, it is not necessary that a man be a member of either chamber; but if an appointee is not a member, custom requires that he shall seek the next seat that falls vacant in the Chamber of Deputies, unless in the meantime he shall have been made a senator. In point of fact, the ministers are selected almost invariably from among the members of Parliament, and mainly from the Chamber of Deputies. Only rarely has the premiership fallen to a senator. Ministers of war and of marine, however, being chosen — as was formerly the custom in France — largely with a view to their technical qualifications, are frequently members of the Senate by special appointment. Under a law of 1888 each minister is assisted

[1] The separation of the two fiscal ministries dates from 1889. The same duality prevailed in Napoleon's government from 1801 to 1815. The disadvantages inherent in the arrangement are sometimes overcome in Italy by placing both departments in charge of a single minister. Stourm, *The Budget*, 476–478.

[2] See p. 399.

by an under-secretary, who obtains his position in the same manner as his chief. Internal organization, including the interrelations of the several departments and the relations sustained by each minister with the premier, is regulated by a decree of 1867, promulgated afresh, with some minor alterations, in 1876.

The Ministry: Functions and Status. — The business of the ministers is, individually, to manage the affairs of their several departments, and, collectively, to determine policies, initiate legislation, and, in brief, perform the functions usually belonging to the principal ministers under a cabinet system of government.[1] Among matters which the law requires to be brought before the ministerial council in all cases are bills which are to be submitted to the chambers in the name of the government, treaties, conflicts of administrative jurisdiction, and proposals relating to the status of the Church, to petitions from the chambers, and to nominations of senators, diplomatic representatives, and a wide range of administrative and judicial functionaries. The law also enumerates many matters which must be brought to the ministry's attention, although action thereon is not made compulsory; and the range of subjects which the premier or other ministers may submit for consideration is purposely left without limit. It is the duty of the premier to convoke the ministers in council; to preside over their deliberations; to maintain, in respect to both administrative methods and political policy, as large a measure of ministerial uniformity and solidarity as may be; and to require from time to time full reports upon the affairs of the several departments.

The constitution authorizes all ministers and under-secretaries to appear, and to be heard, in either legislative chamber, although they, of course, may vote in only the chamber to which they belong. The chambers have no power to compel the presence of these officials; but formal requests for the attendance of a certain minister on a given day are often made, and unless there is strong reason to the contrary, they are likely to be honored. Parliament, indeed, keeps a close watch on the ministers and concerns itself quite as much with the methods and results of administration as does the parliament of France. Ministers are freely questioned; and the right of interpellation is employed, and abused, no less extensively than in France, and with the same tendency to upset governments which otherwise might achieve some measure of stability. Documents can be called

[1] It will be observed that in Italy, as in France, ministry and cabinet are identical in personnel. This is, of course, not true in Great Britain.

for; and while they may be withheld, a minister who is prudent will think twice before risking a refusal. Legislative commissions of inquiry, too, may be set up, with a view to investigating any administrative act or policy. The pathway of a ministry is thus beset with pitfalls; votes of confidence come in quick succession, often at the most unexpected and inconvenient times. When it is recalled that the party situation is equally chaotic with that in France, so that every ministry is a coalition, dependent upon the support of a precarious working alliance in the Chamber, one will not fail to understand why political "crises" are frequent and changes of ministry numerous. As also in France, it is but fair to say, there is less actual instability than might be supposed, for the reason that some ministers usually reappear in several successive cabinets, which, indeed, are often hardly more than former cabinets reorganized.

None the less, the average Italian ministry is not an imposing authority. In the words of an able French writer, "it is manifestly unable to fulfill effectively the three-fold purpose of a parliamentary cabinet. It exercises the executive power in the name, and under the authority, of the king; but it does not always know how to restrain Parliament within the bounds of its proper control, and it is obliged to tolerate the interference of deputies in the administration. Through the employment of the initiative, and of influence upon the acts of Parliament, it is the power which impels legislation; but not infrequently it is lacking in the authority essential to push through the reforms which it has undertaken, and the chamber easily evades its control. It seeks to maintain harmony between the two powers [executive and legislative]; but the repeated defeats which it suffers demonstrate to what a degree its work is impeded by the disorganization of parties." [1]

One function of the ministers, as the working executive, requires a farther word of comment. This is the exercise of the ordinance power. The administrative system of Italy is modeled upon that of France, and, therefore, gives an unusually large place to the promulgation and enforcement of ordinances by the executive authorities. The executive, says the constitution, shall "make decrees and regulations necessary for the execution of the laws, without suspending their execution, or granting exemptions from them." [2] In practice, this power is stretched even farther than is the similar power of the executive in France,

[1] Dupriez, *Les ministres*, I, 291.
[2] Art. 6. Dodd, *Modern Constitutions*, II, 5.

leading sometimes to the creation of temporary law, or even the virtual negation of parliamentary enactments. In this matter Parliament is seldom disposed to stand very rigidly upon its rights; indeed, it sometimes expressly delegates to the ministry the exercise of sweeping legislative authority. The final text of the great electoral law of 1882, for example, was never considered in the chambers at all. After debating the subject to their satisfaction, the two houses simply committed to the government the task of drawing up a final draft of the measure and of promulgating it by executive decree. The same procedure has been followed on other important measures. Not merely the ministers at Rome, but also the local administrative agents, freely exercise the ordinance-making prerogative. "The preference, indeed," as is observed by Lowell, "for administrative regulations, which the government can change at any time, over rigid statutes is deeply implanted in the Latin races, and seems to be especially marked in Italy." [1]

The Senate. — Legislative functions are vested by the constitution in the king and Parliament, the latter consisting of two chambers — an upper, the Senate, and a lower, the *Camera de' Deputati*. Aside from princes of the royal blood, who sit by right from the age of twenty-one and become voting members at twenty-five, the Senate is composed exclusively of persons appointed for life by the crown. It is, along with the Canadian Senate, the best example of a "nominated" upper chamber. As such, it stands somewhere between the British House of Lords, which is predominantly a house of peers sitting by hereditary right, and the French Senate, whose membership is recruited by indirect popular election. In making appointments to the Senate the king is under no restriction as to numbers. But he must select all of his appointees from one or another of twenty-one specified classes of citizens; and he must observe the constitutional requirement that senators shall be at least forty years of age. The categories from which appointments are made — including high ecclesiastics, ministers of state, ambassadors, deputies of extended service, legal and administrative officials, men who during as much as seven years have been members of the Royal Academy of Sciences or of the Superior Council of Public Instruction — may be reduced, broadly, to three: (1) high officials of church and state; (2) persons of fame in science or literature,

[1] Lowell, *Governments and Parties*, I, 166. On the Italian executive in general, see Dupriez, *Les ministres*, I, 281–329. A valuable essay is M. Caudel, "Parlementarisme italien," in *Ann. des Sci. Polit.*, Sept., 1900.

or who by any kind of services or merit have brought distinction to the country; and (3) persons who for at least three years have paid direct property or income taxes to the amount of 3000 lire ($600). Deaths, resignations, and new appointments cause the membership to fluctuate considerably. When the *Statuto* was put in effect in 1848 the number was 78; nowadays it is about 390. As constituted in 1910, the body included the president of the Chamber of Deputies, 147 ex-deputies of six years' service and other men who had been elected to as many as three parliaments, one minister of state, six under-secretaries, five ambassadors, two envoys extraordinary, 23 officials of the courts of cassation and of other tribunals, 33 military and naval officials, eight councilors of state, 21 provincial functionaries, 41 members of the Royal Academy of Sciences, three members of the Superior Council of Public Instruction, two persons of distinguished services to the country, 71 payers of direct taxes in the amount of 3000 lire, and 19 other scattered representatives of several categories. The absence of ecclesiastical dignitaries is to be accounted for by the rupture with the Vatican. The last members of this class to be named were appointed in 1866.[1]

In its composition the Senate is, therefore, imposing. It is recruited exclusively from persons of eminent official position, persons of recognized literary, scientific, or other intellectual attainments, and persons of substance as denoted by tax-paying ability. Its members are of mature years. "If ever," observes an English writer, "a life-nominated chamber was to secure power, the Italian Senate would surely have secured it, and would have become renowned for stability and efficiency."[2] Yet the result has been an upper chamber which can hardly be regarded as better than a fifth wheel of the governmental coach. Appointment by the king means in practice appointment by the ministry commanding a majority in the lower chamber, and, therefore, appointment with a view to the political situation at the moment. Swamping the opposition by the creation of senators is an oft-used expedient. In 1886 forty-one appointments were made at a stroke for this purpose; in 1890, seventy-five; in 1892, forty-two. The Senate jealously guards its right to determine whether an appointee is properly to be considered as belonging to any of the twenty-one stipulated categories, and if it decides that he is not eligible, he is refused a seat. But as long as the

[1] The total number of senators remained unchanged in 1917, although the distribution by groups was somewhat different.

[2] Temperley, *Senates and Upper Chambers*, 93.

government keeps clearly within the enumerated classes, no limitation can be placed by the Senate itself upon the appointing power.[1]

As a result, the legislative independence of the chamber has been reduced to a nullity. "The premier," says Temperley, "ends his political existence in a few years, but leaves his creations behind him in the upper chamber, and the life-peers of the Senate are confronted with a new premier and a new lower chamber. The Pharaoh who knows them not has appeared, and he calls on them to choose between the most strenuous opposition or the most complete submission to him. In the first case, the Senate brings the parliamentary machine to a deadlock in the present; in the second, it mortgages and barters away its own power for the future. Between these two alternatives the Italian Senate has been unable to steer." [2] Twenty years ago the body practically gave up the struggle for real power. It is useful to-day as a revising agency, and it sometimes manages to secure important changes in the details of proposed laws. But it is no longer a checking or an initiating branch, and as a rule it does not oppose the great measures of the lower house at all. Between 1861 and 1910 the government presented in the Chamber of Deputies a total of 7569 legislative proposals, in the Senate only 598; and the number of projects of law originated by the Senate itself during this same period was but thirty-nine. In volume and range of legislative activity, Italy's life-nominated Senate contrasts sharply with the elective upper chamber of France, and abundantly confirms the experience of Canada with an upper house of similar character.[3]

Italy is one of the several countries in which second chamber reform became an important public question in the first decade of the present century. The Senate, it was felt, should be brought into closer touch with the people and made a vigorous, if not a truly coördinate, legislative house. In 1910 the subject was discussed on the floor of the Senate itself, and at the suggestion of the ministry a commission of nine members was created to study "the timeliness, the method, and the extent"

[1] Of 1528 appointments made between 1848 and 1910, only 63 were refused confirmation by the Senate.

[2] *Senates and Upper Chambers*, 94.

[3] It is interesting to observe that with a view to governmental balance and stability, Cavour favored an elective upper house. For illustrations of the Senate's weakness see C. Morizot-Thibault, *Des droits des chambres hautes ou sénats en matière des lois de finance* (Paris, 1891), 156–175. On the Canadian Senate see Porritt, *Evolution of the Dominion of Canada*, Chap. xi.

of various proposed reforms. Late in the year, this commission brought in an elaborate report, written principally by Senator Arcoleo, a leading authority on constitutional law. After pointing out that among European nations the reconstitution and modernization of upper chambers was a subject of much current interest, the commission proposed a carefully considered scheme for popularizing and strengthening the senatorial body. The substance of the plan was: (1) the chamber should henceforth be composed of 350 members; (2) the membership should be divided into three categories, designated, respectively, as officials, men of science and education, and men of political or economic status; and (3) members of the first category, not to exceed 120, should be appointed, as are practically all members at present, by the crown; but members of the other two should be elected by fifteen special colleges so constituted that their membership would represent actual and varied groups of interests throughout the nation. The professors in the universities, for example, organized for the purpose as an electoral college, were to be authorized to choose thirty representatives. Other elements to be admitted to participation, as such, in the elections were to include former deputies, large taxpayers, provincial and communal assemblies, chambers of commerce, agricultural societies, and workingmen's associations. The primary idea of those who propounded the scheme was that through its adoption a more vital contact would be established between the Senate and the varied forces that contribute to the life of the nation. Unfortunately, the Senate did not back up its committee's proposal. Rather, it contented itself with voting in favor of an enlargement of the classes of citizens from which senators may be appointed by the king; although, in February, 1911, it went so far as to request the ministry to present new proposals, and, in particular, a plan to vest in the Senate the choice of its presiding officer. There has been to date (1920) no farther progress toward a solution of the problem. It seems probable, however, that agreement will eventually be reached upon some such plan as that which the commission of 1910 prepared.[1]

[1] E. Pagliano, *Il Senato e la nomina dei senatori* (Rome, 1906); L. A. Magro, *L'aristocrazia e il Senato* (Catania, 1909); I. Tambaro, "La réforme du Sénat italien" in *Rev. du Droit Pub.*, July-Sept., 1910, and "Les débats sur la réforme du Sénat italien," *ibid.*, July-Sept., 1911; M. Scelle, "Réforme du Sénat italien," *ibid.*, Oct.-Dec., 1911; Nazzareno, "La riforma del Senato," in *Rivista di Diritto Pubblica*, III, 171. The report of the commission of 1910 is in *Per la riforma del Senato relazione della commissione* (Rome, 1911).

The Chamber of Deputies: Electoral Arrangements to 1912.—The lower branch of Parliament consists of 508 members chosen simultaneously by direct vote, and by secret ballot, in single-member districts. The term is five years; but a dissolution is practically certain to take place before the end of the full period, and the average interval between elections is nearer three years than five. Deputies are not required to be residents of the districts which they represent, but they must be citizens not less than thirty years of age, in possession of full civil and political rights, and not members of certain classes (chiefly clergymen and salaried government officials) specially debarred. In late years a system of nomination of parliamentary candidates by petition has been introduced; and in 1912 provision was made for the first time for payment of a salary to members, amounting to 6000 lire ($1200) annually. To be elected, a candidate must poll not only a number of votes in excess of one-sixth of the total number of enrolled electors within his district, but also an absolute majority of all the votes cast. If, after balloting, it is found that no candidate meets this requirement, a second ballot (*ballottaggio*) takes place after a week.[1] At each polling place the presiding officer and "scrutineers" are chosen by the voters present. The method of voting is simple. In the polling-room stands a table, on which are placed two square glass boxes, one empty, the other containing the voting papers. As the list of enrolled electors is read alphabetically, each man steps forward, receives a ballot paper, takes it to an adjoining table and writes on it the name of the candidate for whom he wishes to vote, folds the paper, and deposits it in the box reserved for the purpose. After the list has been read through any voter who was not present to respond when his name was called may cast his ballot in a similar manner. The polling hours extend, as a rule, from 9 a. m. to 4 p. m.[2]

A main problem of Italian domestic politics during the past fifty years has been the parliamentary franchise; and one of the most notable events in the recent history of democratic government was the introduction of manhood suffrage in Italy, almost

[1] At the elections of March, 1909, in 75 of the 508 districts no candidate received an adequate majority. In 57 of these districts the candidate who, at the first ballot, had received the largest number of votes was elected at the second ballot. The political effect of the second ballot is slight. At the election of 1900 there were 77 second ballotings; at that of 1904, 39. A. N. Holcombe, "Direct Primaries and the Second Ballot," in *Amer. Polit. Sci. Rev.*, Nov., 1911; A. F. Locatelli, "Considerazioni intorno all' opportunità di abolire il ballottaggio," in *La Riforma Sociale*, July–Aug., 1910.

[2] King and Okey, *Italy To-day*, 14.

tripling the electorate at a stroke, by the electoral law of June 30, 1912. The history of the suffrage since the establishment of the present kingdom falls into three periods, separated by the legislation of 1882 and 1912. Under a law of 1860 the suffrage was restricted to male property-holders who were able to read and write, who had attained the age of twenty-five, and who paid an annual tax of at least forty lire ($8) — qualifications which not more than two and one-half per cent of the population could meet. In 1882, after prolonged consideration of the subject, the ministry carried through Parliament a series of measures reducing the property qualification from forty lire to nineteen lire eighty centesimi (about $3.95) and lowering the age limit to twenty-one years. The disqualification of illiteracy was retained, and a premium was placed upon literacy by the extension of the franchise, regardless of property, to all males over twenty-one who had received a primary school education. The net result was to raise the number of voters from 627,838 to 2,049,461, about two-thirds of the new electors obtaining the franchise by reason of their ability to meet the educational qualification. An incidental effect of the reform was to augment the political influence of the cities, because the proportion of illiterates was smaller in them than in the country districts. Small landed proprietors, although of a more conservative temperament, and frequently of a better economic status, than the urban artisans, were usually unable to fulfill the educational qualification.

Originally, deputies were elected in single-member districts. With a view to liberating them from the tyranny of local influence, the law of 1882 distributed the 508 seats among 135 districts, which elected from two to five deputies apiece; and in order to secure some representation for minorities it was farther provided that in districts electing five deputies, no elector should vote for more than four. The new *scrutinio di lista*, however, did not yield satisfactory results, and an act of May 5, 1891, created a commission which divided the country into 508 single-member districts; and during the past quarter-century this arrangement has been uninterruptedly adhered to.

As the system stood prior to the electoral law of 1912, voters generally were required to have the following qualifications: (1) Italian citizenship; (2) minimum age of twenty-one; (3) ability to read and write; (4) passage of examinations in the subjects included in the course of compulsory elementary education. The last-mentioned qualification was not, however, required of public officials, graduates of colleges, professional men, persons

who had served two years in the army, citizens who paid annually a direct tax of not less than nineteen lire eighty centesimi, those who paid an annual agricultural rental of 500 lire, those who paid house-rent of from 150 lire in communes of 2500 people to 400 lire in communes of over 150,000, and certain less important classes. Through the operation of the literacy test the system provided an avenue for an indefinite increase of the number of voters, although the obstacles to universal elementary education continued to be so numerous and so weighty that the democratization of the state proceeded with extreme slowness. In 1904 the number of enrolled electors was 2,541,327, exclusive of 26,056 temporarily disfranchised because of being engaged in active military service. This was but 29 per cent of the male population over twenty-one years of age, and 7.67 per cent of the total population. In June, 1912, immediately before the enactment of the law establishing manhood suffrage, the number of voters was 3,247,772, in a total population of 34,671,377. It is to be observed, furthermore, that the proportion of registered electors actually voting was ordinarily astonishingly small. At the elections of November, 1904, the number who went to the polls was 1,593,886, which was but 62.7 per cent of those who had a right to do so. In individual cities and provinces the proportion sometimes fell as low as thirty, or even twenty, per cent.

The Electoral Law of 1912. — So ominous was the menace of illiteracy that only within comparatively recent years was there serious thought of introducing a system of manhood suffrage. After 1900 a movement in this direction began to gather strength. It found support, not only among the Socialists and other radicals, but among men who felt that the illiberality of the existing franchise branded the nation in the eyes of the world as backward and inferior. The question of electoral reform became paramount in party politics; ministries rose and fell because of their attitude upon it. There was much discussion, — official, academic, and popular, — although not so much candid weighing of the advantages and disadvantages of the proposed change as there should have been. Finally, in June, 1911, the third Giolitti ministry laid before Parliament a measure in which the demands of the franchise extensionists were met more satisfactorily than in previous projects, and on May 29, 1912, the bill was passed in the Chamber of Deputies by the decisive vote of 284 to 62. After some weeks the Senate acted upon it favorably, and on June 30 the law was formally approved.

The measure bestows the suffrage upon substantially all adult

male citizens,[1] who are divided for the purpose into three categories. One comprises literates of a minimum age of twenty-one, without regard to property or other qualification. A second comprises, similarly, illiterates of a minimum age of thirty. The third consists of persons who have rendered service in the army or navy, without regard for education, property, or age. The number of electors was thus raised from 3,247,722 to 8,635,148, of whom more than half, it is estimated, cannot read or write. Opportunity to test the new arrangements was afforded by the parliamentary elections of 1913, which were hailed by enthusiasts as the first elections of a truly national character in Italian history. The results were not altogether reassuring. The five million illiterates upon whom the franchise had been conferred availed themselves of their new and unfamiliar privilege sparingly. Despite the efforts of the various parties to enlist as many as possible of the new voters, the percentage of the electors who went to the polls was, in many districts, smaller than at the elections of 1909. In Rome the percentage in 1909 was fifty, while in 1913 it was but thirty-five. The stolid assumption of the mass of the newly enfranchised that the intricacies of the electoral process were not to be mastered, or were not worth mastering, afforded striking evidence of the nation's unpreparedness for manhood suffrage, and, therefore, of the dubiousness of the law by which the innovation was introduced. In thirty years Italy has achieved a record of economic growth and of social reform of which a nation may be proud. The Italian aptitude for orderly politics is, however, imperfectly developed, and much time will be required to build up a political *morale* equal to the English or the French. On the whole, however, it may prove not disadvantageous that opportunity has been provided for the mass of the people, rich and poor, literate and illiterate, to acquire their political experience and political acumen through the exercise of common privileges and responsibilities.[2]

[1] A determined effort was made to carry an amendment conferring the vote upon educated and professional women. The Socialists, indeed, demanded the suffrage for all adult women. No proposal on the subject was adopted, although the feminist movement gathered new strength as a result of the debates.

[2] On the subject of electoral reform see A. Piebantoni, *La riforma della legge elettorale* (Naples, 1909); G. Bandini, *La riforma elettorale con la rappresentanza proporzionale nelle elezioni politiche* (Rome, 1910); G. Sabini, *La riforma del sistema elettorale in Italia* (Turin, 1910); Siotto-Pintor, "Estensione del suffragio e distribuzione della rappresentanza," in *Rivista di Diritto Pubblico*, Dec., 1911, and *La riforma del régime elettorale e le dottrine della rappresentanza politica e dell' elettorato nel secolo XX* (Rome, 1912). The law of 1912 is analyzed in F. Celentano, *Studio critico della nuova legge elettorale politica* (Rome, 1914), and the results of the first elections held under it (1913) are considered in A. Ruiz, *I resultati del primo*

Parliamentary Organization and Procedure. — Under provisions of the constitution, neither branch of Parliament may be summoned without the other, and the sessions of the two houses must begin and end at the same time.[1] Annual sessions are not stipulated, but the needs of the Treasury and of other branches of administration require that there shall be at least one session a year; a session, indeed, sometimes extends, with occasional recesses, over an entire year, or even two years. In the Senate, the president and vice-president are named by the king; the secretaries are selected by the members from their own number. In the Chamber, all officers are chosen by the members for the duration of the session. Although endowed with power to appoint certain important committees, such as those on rules and contested elections, the president of the Chamber is commonly reëlected, without regard to party affiliations, as long as he is willing to serve, after the manner of the Speaker of the British House of Commons. The membership of the Chamber of Deputies is divided into nine *uffici*, or sections, and that of the Senate into five. A fresh division, by lot, takes place every two months. The principal function of the *uffici* is the election of committees for whose selection no other provision is made. In each chamber the most important of all committees, that on the budget, is elected directly by the entire membership. In the lower house certain other committees are elected in the same way; while, as has been said, those on elections and on rules are appointed by the president. But committees specially constituted for the consideration of particular measures are made up of members chosen from the various *uffici*, unless the chamber designates some other method.

Each house frames its own rules of procedure. The constitution stipulates that the sessions shall be public (with the qualification that on motion of ten members secret sessions may be held); that Italian shall be the official language; that no session or vote of either house shall be valid unless an absolute majority of the members is present; and that neither house shall receive any deputation, or give hearings to persons other than the legislative members, ministers, and commissioners of the government.[2] It is farther enjoined that deputies shall

esperimento dell' allargato suffragio politico, in *Riv. di Diritto Pubblico*, Nov.–Dec., 1913.

[1] Art. 48. Dodd, *Modern Constitutions*, II, 12.

[2] Arts. 52–54, 59, 62. Dodd, *Modern Constitutions*, II, 12–13. In practice, the requirement of the presence of an absolute majority of members is sometimes disregarded.

represent the nation as a whole, and not the districts from which they are chosen, and to this end no binding instructions may be imposed upon them by the electors. Votes are taken by rising, by division, or by secret ballot, the third method being obligatory in all final decisions on bills, and on measures of a personal nature.

The two houses have concurrent powers of legislation; that is, all measures, in order to become law, must be considered and acted upon by both. The Senate is invested also with a quasi-judicial character by a provision of the constitution which authorizes the crown to constitute it a high court for the trial of cases involving treason or other attempts upon the safety of the state, and for the trial of ministers against whom impeachment proceedings are brought by the lower chamber; and, as in England, bills that have a distinct judicial bearing are introduced first in the upper house. All money bills, however, must be introduced first in the Chamber of Deputies; and, as has been pointed out, the great majority of measures of a miscellaneous character make their first appearance there. Naturally, most bills — especially important ones — are brought forward by the prime minister or some other minister or under-secretary. But non-ministerial members introduce bills more freely than in England. The members are not so much restrained by party discipline as are members of the English Parliament; besides, the ministry is, as a rule, too uncertain of its tenure to feel free to rebuff members who desire to submit measures. The private member who wishes to introduce a bill must first obtain consent, which is given in the Senate by two-fifths of the members voting and in the Chamber of Deputies by approval of three of the nine *uffici*. Even when the ministry is unfavorably disposed, it is not likely to try to prevent a private member from getting his bill before the chambers; so that the necessary consent is seldom withheld. Codes and organic laws almost invariably originate with the government, but many ordinary statutes spring from proposals offered by deputies or senators who are not of the ministerial group.[1]

The Judiciary. — The constitution contains broad provisions relative to the administration of justice which seem amply to safeguard the rights of the citizen; great codes covering civil law, criminal law, commercial law, civil procedure, and criminal procedure, enacted at various times between 1865 and 1889,

[1] The history of Italian legislation is best presented in A. Capozio and U. Maculan, *Indice sistematico cronologico della legislazione italiana, 1861–1917* (Rome, 1918).

seek to give uniformity to the law in all parts of the realm; and to the scattered tribunals carried over from the period before 1861 have been added, largely on the French model, courts sufficient to give the country one of the most elaborate of European judicial systems.

First of all, the kingdom is divided into 1535 *mandamenti*,[1] 162 tribunal districts, and 20 appellate court districts. In each *mandamento* is a *pretura*, or magistracy, which exercises jurisdiction in civil cases, and also in cases involving misdemeanors (*contravvenzioni*) and offenses (*delitte*) punishable by imprisonment not exceeding three months, or banishment not exceeding one year, or a fine not exceeding 1000 lire. In minor civil cases, involving sums not in excess of 100 lire, jurisdiction is vested in justices of the peace (*giudici conciliatori*), who, upon request, act as arbitrators in cases involving any amount. In each of thirteen of the largest cities there is a *pretura* which exercises penal jurisdiction exclusively. Next above the *pretori* stand the penal courts, one in each of the 162 tribunal districts. These are courts of first instance for offenses involving a maximum imprisonment of ten years or a fine of more than 1000 lire; and they hear appeals from the decisions of the *pretori*. Closely associated are the courts of assize, which have original jurisdiction in cases involving a penalty of imprisonment for life, or for a period longer than a minimum of five, and a maximum of ten, years. Save when the Senate is organized as a high court of justice, these tribunals have exclusive jurisdiction of all press offenses and of all cases involving attacks upon the security of the state. As a rule, the courts of assize make use of juries. There is no appeal from their decisions save upon a point of form; and appeal lies solely to the court of cassation at Rome. From the penal tribunals appeal lies, in cases not dealt with by the assize courts, to the twenty courts of appeal.

At the top of the system stand five practically independent courts of cassation, located at the historic capitals of Turin, Florence, Naples, Palermo, and Rome. Each of these exercises, within its own territory, final jurisdiction in all cases involving questions of error in the application of the ordinary civil law. The court of cassation at Rome, it is true, has been given exclusive jurisdiction in conflicts of competence between different courts, conflicts between the courts and the administrative

[1] Prior to 1901 the administrative and electoral *mandamenti* and the *mandamenti giudiziarii* were identical geographically, and there were 1805 of them. A law of the year mentioned reduced the judicial *mandamenti* to 1535.

authorities, the transfer of suits from one tribunal to another, writs of error in criminal cases, and a variety of other special matters. But, aside from this, the five tribunals are equal in rank and function; there is no appeal from one to another, and the decisions arrived at by one do not constitute precedents which the others are obliged to recognize. One of the most striking aspects, indeed, of the Italian judicial system is its lack of centralization; although it should be added that the centralizing principle which, since 1870, has so notably permeated all other departments of the government has been gradually winning its way in the judiciary.

In Italy, as in other continental countries, a sharp distinction is maintained between public and private law. The separation of functions between the ordinary and the administrative courts is, however, not so clear-cut as in France and elsewhere. In 1865, indeed, the surviving administrative courts of the states which had been drawn into the kingdom were abolished, and it was arranged that the ordinary courts should exercise unrestricted jurisdiction in all criminal cases and in all civil cases in which, by decision of the Council of State, a civil or political right was involved. The system worked poorly, and laws of June 2, 1889, and May 1, 1890, set off a special section of the Council of State (composed of a president and eight councilors named by the king) to serve as an administrative court, while at the same time an inferior administrative jurisdiction was conferred upon the *giunta* (prefect and certain assistants) of the province. In practice to-day, when the legality of acts committed by the administrative officials is called in question, the ordinary courts exercise jurisdiction if the question is one of private *right;* if it is one merely of private *interest*, it goes for decision to an administrative tribunal. In most continental countries *all* cases involving the legality of official acts fall within the domain of the administrative courts.

The judicial system is not notably satisfactory; it is, indeed, distinctly inferior to that of France. Lack of the unifying influence of a single supreme tribunal is a handicap. The national prejudice against judge-made law obstructs the growth of judicial custom. More important still, the judges — although by the terms of the constitution irremovable after three years of service (except in the lowest courts), and by statute removable only for crime or neglect of duty, and only with the consent of the court of cassation at Rome — are transferable from one post to another by order of the government, and hence

are by no means as free as they ought to be from executive control.[1]

Local Government: the Province. — In her historic territorial divisions Italy once had the basis of a natural and wholesomely decentralized system of local government. Instead of availing themselves of it, however, the founders of the present kingdom reduced the realm to a *tabula rasa* and erected a new and symmetrical hierarchy of territorial divisions and governmental organs. A great statute of March 20, 1865, introduced a system of provincial and communal organization, whose essentials were taken over in part from Belgium, but chiefly from France. The functions and relations of the various local agencies were amplified and given substantially their present form in the law of December 30, 1888, supplemented and amended by acts of July, 7, 1889, and July 11, 1894. So closely has the French model been followed that the resemblance between the two systems amounts almost to duplication. The Italian system calls, therefore, for no extended description.

The areas of local government are four in number — the province, the *circondaro*, the *mandamento*, and the commune. Of these, the first and last alone possess distinct interests and some measure of autonomy and therefore of vitality. The *circondaro*, corresponding to the French *arrondissement*, is essentially an electoral division. Strictly, there are in the kingdom 197 *circondari;* but 87 districts comprising the province of Mantua and the eight provinces of Venetia are, in all save name, *circondari* also. The 1805 *mandamenti*, or cantons, are mere subdivisions of the provinces for administrative purposes.

There are 69 provinces, varying considerably in size, but with an average population of 450,000 to 500,000.[2] The Italian province corresponds closely to the French department. At its head is a prefect, appointed by the crown. Like the French prefect, the Italian is a political official, and the fact not merely influences his appointment but greatly affects his conduct in office. As representative and agent of the central government he publishes and executes the laws, supervises the provincial administration, opens and closes sessions of the provincial council and sanctions or vetoes the measures of that body, and, in general, safeguards the interests of the government in the province.

[1] Lowell, *Governments and Parties*, I, 170–178; Brusa, *Italien*, in Marquardsen's *Handbuch*, 231-238; E. Pessina, *Manuali del diritto penale italiano* (Naples, 1916).

[2] The present description takes no account of the territory acquired by Italy as a result of the Great War. Arrangements for local government in these lands are as yet (1920) incomplete.

Every province has a council of from 20 to 60 members, elected for a period of six years under a suffrage system practically identical with that which operates in parliamentary elections. One-half of the membership is renewed triennially. The council meets regularly once each year, nominally for a month's session; but an extraordinary session may be called at any time by the prefect, by the deputation, or at request of one-third of the councilors. Aside from voting the provincial budget, the powers of the council are small. In part, *e.g.*, in respect to the maintenance of highways, the control of secondary and technical education, and a share in the supervision of charity, they are obligatory; in part they are merely permissive. A deputation, or commission, of from six to ten persons, elected by the council from its own membership, represents the council in the intervals between its sittings and carries on the work intrusted to it. The prefect is advised by a prefectural council of three members appointed by the government, and he is further assisted by a *giunta* of six members, of whom four are elected by the provincial council, and the others are drawn from the prefectural council. It is the business of the *giunta* to assist the prefect and sub-prefects in the supervision of local administration and to serve as a tribunal for the trial of cases arising under administrative law. The prefect and the *giunta* have large, and to a considerable degree discretionary, powers of control over the proceedings of the council; and the prefect, representing as he does the central government exclusively, can be called to account only by his superiors at Rome.

Local Government: The Commune. — As in France, the commune is the least artificial and the most vigorous of the local governmental divisions. In 1911 there were 8323 communes, besides four boroughs in Sardinia which were not included in the communal organization. Every commune has a council of from 15 to 80 members, according to its population, elected for a period of six years, one-half retiring every three years. This council holds two regular sessions a year, although in the large towns it, in point of fact, meets much more frequently. Between sittings its work is carried on by a *giunta*, which serves as a committee to execute the resolutions of the council and to draft its budget and by-laws. The powers of the council, which are comprehensive, include maintenance of streets, roads, and markets; provision for elementary education; arrangements for the relief of the poor, and for the registration of births and deaths, and of electors; establishment of police regulations and prisons;

and, under varying conditions, attention to a wide variety of other matters. The range of its optional activities is almost boundless. The council may establish theaters, found museums, subsidize public amusements, and, indeed, go to almost any length in the regulation of local affairs and the expenditure of local funds.[1]

As its chief official, every commune has a *sindaco*, *i.e.*, a syndic, or mayor. Prior to 1896 the syndic was chosen by the communal council from its own members if the commune had more than 10,000 inhabitants, or was the capital of a province or *circondaro;* otherwise he was appointed from among the members of the council by the king. In the great majority of communes the latter was the procedure. Since 1896 the syndic has been chosen in all communes by the council, for a term of three years, together with a secretary, elected in the first instance for two, but afterwards for periods of not less than six, years. Despite the fact that the syndic is now invariably elected by the communal council, he is still something more than the executive head of the local community. Like the prefect, he is considered a functionary of the national government, and, save under very exceptional circumstances, he can be removed only with the prefect's permission. He can be called to account only by his superiors, and he can be sued only with the permission of the crown.[2]

[1] On the extravagance of the local governing authorities, see King and Okey, *Italy To-day*, 267.

[2] For brief accounts of local government in Italy see Lowell, *Governments and Parties*, I, 161–170, and King and Okey, *Italy To-day*, Chap. xiv. More extended treatment will be found in E. del Guerra, *L'Ammistrazione pubblica in Italia* (Florence, 1893), and G. Greco, *Il nuova diritto amministrativo Italiano* (Naples, 1896). Later developments are described and farther changes advocated in G. Abignento, *La riforma dell' amministrazione pubblica in Italia* (Bari, 1915), and G. Valenti, "Unità politica e decentramento amministrativo," in *Rivista d'Italia*, July, 1919.

CHAPTER XXX

PARTIES AND POLITICS

Quirinal[1] **and Vatican.** — One who would understand the political life of Italy must from the outset take into consideration a situation existing in that country which has no analogy elsewhere; other lands have difficult problems arising from the relations of church and state, but none save Italy contains within its borders a separate, jealous, and sovereign ecclesiastical government. The capital of the Italian kingdom is likewise the capital of the Catholic world, the seat of a government which not only is independent of the government of the Italian state but is by tradition hostile to it. This condition of things dates from 1870, when the armed forces of Victor Emmanuel II crossed the borders of the little papal dominion around Rome, entered the city, and by a few sharp strokes beat down all forcible opposition to the sovereignty of the united Italian nation. The purpose was not to drive the Pope from the Eternal City, and not to interfere with the free exercise of his spiritual functions, but simply to bring into the new kingdom a territory that was felt to be essential to its unity, and to make possible the removal of the seat of government to the one logical and necessary location, *i.e.*, Rome.

With a view to compensating the head of the Church for his losses and assuring him of future independence and security, Parliament enacted, early in 1871, a comprehensive Law of Papal Guarantees, which stands on the statute book to this day.[2] The Pope was to retain full sovereign rights on an equality with the king, and his person was to be inviolate. He was to have permanent possession of the Vatican and Lateran palaces, with all appurtenant buildings, museums, libraries, gardens, and lands

[1] The palace occupied by the royal family. It was formerly a papal residence. The name is sometimes used figuratively, as it is here, to denote the civil, secular power in Italy as distinguished from the papal power.

[2] An English version is printed in Dodd, *Modern Constitutions*, II, 16–21. The full title of the instrument is "Law for the Guarantee of the Prerogatives of the Sovereign Pontiff and of the Holy See, and for the Relations between Church and State."

(including the church of St. Peter's), together with the villa of Castel Gandolfo, seventeen miles southeast of Rome, near Albano. These properties were to be exempt from taxation and from seizure for public purposes, and, except with papal permission, no dignitary or agent of the state should, in his official capacity, set foot in the specified palaces and grounds, or in any place where a conclave or an œcumenical council was in session. To offset the loss of revenue suffered by the extinction of temporal dominion, the sum of 3,225,000 lire ($645,000) annually was to be "entered in the great book of the public debt as a perpetual and inalienable income of the Holy See," *i.e.*, as a yearly subsidy for all time from the national treasury. Finally, the Pope was to be immune from all interference by the government or its agents with his spiritual activities. He might maintain separate postal and telegraph offices, transmit sealed packages of correspondence under the papal stamp, either directly or through the Italian post, and send couriers who, within the kingdom, should be on an equal footing with emissaries of foreign governments.

Furthermore, the status of the Church in general was so defined as to approach Cavour's ideal of "a free church in a free state." All restrictions upon the right of the Catholic clergy to assemble for ecclesiastical purposes were abolished. With provisional exceptions, the *exequatur*, the *placet*, and all other forms of civil authorization of spiritual measures were done away.[1] The state yielded its ancient right of nominating to bishoprics, and the bishops themselves were no longer required to take oath of fidelity to the king. In matters of spiritual discipline, it was stipulated that there should be no appeal to the civil courts from the decisions of the ecclesiastical authorities. If, however, any ecclesiastical decision or act contravened a law of the state, subverted public order, or encroached upon the rights of individuals, it was to be, *ipso facto*, of no effect; and in these matters the state was made sole judge. The Church, in short, was granted a very large measure of freedom and of autonomy; but at the same time it was not to be so far privileged as to be removed beyond the pale of the public law. If its acts or measures constituted penal offenses, they were to be subject to the provisions of the ordinary criminal code.[2]

[1] On the government's use of the *exequatur* since 1871 see King and Okey, *Italy To-day*, 253.

[2] An act of July 12, 1871, so modified articles 268–270 of the Italian penal code as to render ecclesiastics liable to imprisonment of from six months to five years, and to fines of from one thousand to three thousand lire, for spoken or written attacks upon the state, or for the incitement of disorder.

To Victor Emmanuel and his advisers, this seemed a reasonable settlement. But Pope Pius IX flatly refused to accept it. He felt that he had been robbed of his rightful possessions and of his real independence, and, although unable to get them back by his own efforts, he hoped, and for a good while expected, to do so with the aid of some Catholic power, presumably France. To accept the Law of Guarantees would be tantamount to a recognition of the despoiler. Hence the pontiff refused to take any of the money voted him, and shut himself up as a "prisoner" in the Vatican, so that he should not even so much as set foot on soil ruled over by the king. Consequently, what was intended as a bipartite agreement based on compromise became, rather, a one-sided *modus vivendi* steadily adhered to by the government, but disregarded wherever possible by the papal authorities. Successive appeals to the Catholic powers having failed to bring relief, the Vatican ultimately fell back upon a policy of obstruction, and in 1883 Pope Leo XIII promulgated a decree, *Non Expedit*, declaring it undesirable for Catholics to vote at parliamentary elections or to hold office under the royal government. Twelve years later a decree of the same Pope, *Non Licet*, went a step farther by expressly prohibiting political activities formerly pronounced simply "inexpedient." The object was, of course, to embarrass the government and to weaken its popular support. The effect was not as great as was desired; the decrees were warmly resented by many loyal Catholics, and they were never generally observed. They tended, however, to draw a line between patriots and faithful Catholics. "On the one side, while the bulk of Italians continued to describe themselves as Catholics, the church by combating nationalism weakened its hold upon them. On the other side, the conscientious abstention of many good and honest people from politics left the Italian government in the hands of men indifferent, if not opposed, to religion, and weakened the state."[1]

As will be explained, the papal ban on political activity has been practically removed, and the feeling of the Vatican toward the Quirinal is less bitter than formerly. None the less, the breach has never been healed. There are no direct relations between the two authorities; the Pope refuses to seem to accept the protection of the king by venturing forth upon secular soil, although he actually lives all of the time under the broad and general protection from the state which is stipulated in the Law of Guarantees; not a penny of the annuity has been accepted, and under the

[1] Haves, *Political and Social History of Modern Europe*, II, 272.

rule of prescription the government appropriates to its own uses every five years the sums that have accumulated to the papal credit; if Pope Benedict, in an encyclical letter of 1920, rescinded the order forbidding Catholic rulers to visit the king of Italy in Rome, he took occasion in the same communication to reiterate the claims of the Holy See to temporal power, and to ask that, once international peace was fully established, the "abnormal conditions" affecting the head of the Church should be brought to an end. The situation has warped Italian political thought and stunted the nation's political development; and it has been no less injurious to the Church than to the state.[1]

Party Development to 1914. — The conflict of Quirinal and Vatican, and the effort of the latter to frustrate the normal operation of the government, added to the political inexperience of the Italian people, the traditions of localism, and the innate tendencies to factionism, have brought it about that in the kingdom to-day, as in France, political parties are numerous, and their memberships and programs are subject to swift and bewildering fluctuation. From 1870, when the country's unification was completed, to 1876 the nation's affairs were controlled by an ill-defined group of Conservatives, composing the "Right," whose strength lay in Tuscany and the regions northward, and whose vigorous and sometimes arbitrary management disclosed a distrust of democracy for which the illiteracy and backwardness of the masses were not entirely responsible. During the next twenty years the Left was in the ascendancy. Its leaders — Depretis, Crispi, and others — were men of the south; they favored democracy, and hence became the authors of the electoral law of 1882; and, while the successive ministries ruled with the support rather of an incoherent group of factions than of a party in any true sense, they succeeded in giving the nation's course a decided bent both toward democracy and toward a bolder international policy. After 1896 came an era — which has lasted to the present day — in which the growing multiplicity of parties

[1] For brief discussions of church and state in Italy see King and Okey, *Italy To-day*, Chaps. ii and xiii; F. M. Underwood, *United Italy*, Chaps. xi–xii; and J. Bainville, *Italy and the War* (London, 1916), Chap. v. A useful book is R. de Cesare, *Roma e lo stato del papa dal ritorno di Pio IX*, 2 vols. (Rome, 1907), of which there is an abridged translation by H. Zimmern under the title *The Last Days of Papal Rome, 1850–1870* (Boston, 1909). Mention may be made of F. Nielsen, *History of the Papacy in the Nineteenth Century* (London, 1906); M. Pernot, *La politique de Pie X* (Paris, 1910); A. Brunialto, *Lo stato e la chiesa in Italia* (Turin, 1892); G. Barzellotti, "L'Italia e il papato," in *Nuova Antologia*, March 1, 1904; G. Paoli, "Benedict XV: the Significance of his Election," in *Contemp. Rev.*, Oct., 1914; and A. Fawkes, "The Pontificate of Pius X," in *Quar. Rev.*, Apr., 1917.

bore fruit in cabinets of an [illegible] composite character. Nothing would be gained by telling the story of these cabinets here.[1] Certain aspects of the party situation as it has come to be in our own time may, however, be set out, preliminary to the mention of two or three important developments of very recent date.

"From the beginning," says an Italian writer, "the constitution of our parties has been determined, not at all by great historical or political considerations, but by considerations of a purely personal nature, and this aspect has been accentuated more and more as we have progressed in constitutional development. The natural conditions surrounding the birth and growth of the new nation did not permit the formation of a true conservative party which could stand in opposition to a liberal party. The liberal party, therefore, occupying the entire field, divided into groups, somewhat arbitrarily called Right and Left, in accordance with simple distinctions of degrees and forms, and perchance also of personal disposition."[2] The preponderating facts, in short, concerning political parties in Italy are two: (1) the absence — at all events until the organization of the People's party in 1919, to be described below — of any genuinely conservative party such as is to be found in most continental countries and (2) the splitting of the liberal forces, which elsewhere are compelled to coöperate in some degree against the conservatives, into a number of factional groups, dominated largely by ambitious leaders, and unwilling to unite save in occasional coalitions for momentary advantage. The lack of an historic conservative party is to be explained largely by the anomalous situation which has existed since 1870 in respect to church and state. Until late years, that important element, the clericals, which normally would have constituted, as does its counterpart in France, the backbone of a conservative party, persisted in the purely passive policy of abstention from national politics. In the evolution of party groupings it had no part, and in Parliament it was practically without representation. All active party groups were essentially "liberal," and rarely did any one of them put forward a program which distinguished it sharply from its rivals. Compact party organization and formal party machinery, furthermore, have been almost non-existent; party discipline

[1] The history of Italian ministries from 1861 to 1912 is sketched in the first edition of this book, pp. 391–398; Seymour and Frary, *How the World Votes*, II, Chap. xxv; and Underwood, *United Italy*, Chaps. v–vi.

[2] Cardon, *Del governo nella monarchia costituzionale*, 125.

has been a myth; men have crossed from one party group to another with little difficulty, and often with little reason; and although at election times the party leaders have made some show of avowing definite principles and policies, the actual conduct of public affairs has been affected, as a rule, very slightly by the victory or defeat of any particular party or group of parties.

This colorless aspect of party politics arises not only from lack of that fundamental cleavage between Conservatism and Liberalism which exists in Germany, in Belgium, in Holland, and in diminishing degree in Great Britain, but also from the eclipse of national interests and issues by local ones. The horizon of the voter is narrow; that of the deputy is often hardly wider. Indeed, it is local antipathies, traditions, and propensities, far more than ideas and programs, that give political parties their character in the Chamber and throughout the country. Until the Great War, modern Italy never experienced a political or religious struggle of the sort which serves to break up local alignments and to fix the traditions of party lines on a broadly national basis. A characteristic feature of Italian politics, too, has been the readiness of the people to tie themselves up to a personality of commanding force, and, in general, the tendency to fix the attention upon men rather than upon policies or measures. Once it was Depretis who dominated the scene; later it was Crispi; still later it was Giolitti. During the period 1870–1914 the premiership was held by one or another of these three men precisely half of the time. The position long occupied by Giolitti illustrates the point. Giolitti lacked the forceful qualities of Crispi, but he personified Italian politics even more completely. He dreamt of leading a radical democracy, yet when the practical need arose he was ready to go any distance in the path of conservatism. He found little pleasure in problems which were remote or in questions of large dimension. He was at once a visionary and an opportunist, a nationalist and a particularist. In the country's politics he seemed indispensable, and in 1914 the people generally admired him no less intensely than twenty years earlier, after the Banca Romana scandals, they hated him. One of the secrets of his power lay in the fact that, while upon occasion he had been a virtual dictator, he never clung inordinately to office. He was supported by great numbers of men upon personal grounds entirely, and observers who deplore the Italian proneness to abdicate principle and blindly follow a leader can point to no more unmistakable symptom of

the condition they lament than the hold acquired by the Giolittist cult.[1]

The Growth of Socialism. — Speaking broadly, Italian parties have therefore been little more than factions, united by personal ties, fluctuating in membership and in leadership, fighting with such means as for the moment appeared dependable for the perquisites of office. Of broadly national political issues there usually have been none, just as indeed there have been no truly national parties. Of late, however, there has been a certain development in the direction of national parties and of stable party programs. This has come about primarily through the growth of the Extreme Left, especially of the Socialist wing. Although the effects are not yet such as to save the country from the somewhat chaotic conditions inherent in the group system, the development of the *partiti popolari* which compose the Extreme Left, *i.e.*, the Republicans, the Radicals, and the Socialists, is an interesting political phenomenon. The Republicans have an illustrious past and have rendered the country great service, but they are now not numerous or well organized. Quite impotent between 1870 and 1890, they gained a good deal of ground during the stormy ministries of Crispi; but the rise of socialism has weakened them, and they are to-day practically confined to Freemason and other special circles. The royal family is popular throughout the country; monarchy, as it is organized, in no way interferes with the fullest development of democracy; and there is no reason to expect the conversion of the country into a republic, for the reason that it already has the essentials of republican government. To employ an expressive phrase of the Italians themselves, the Republicans are *quattro noci in un sacco*, "four nuts rattling in a bag." The Radicals are stronger, and their outlook is more promising. They are monarchists who are dissatisfied with the government of the older parties, yet distrust socialism. They draw especially from the artisans and lower

[1] The political parties of Italy in the later nineteenth century are described briefly in Lowell, *Governments and Parties*, II, Chap. iv, and more fully in King and Okey, *Italy To-day*, Chaps. i–iii, and Underwood, *United Italy*, Chaps. v–vi. An important treatise is M. Minghetti, *I partiti politici e la ingerenza loro nella giustizia e nell' amministrazione* (2d ed., Bologna, 1881). Useful articles are R. Bonfadini, "I partiti parlamentari," in *Nuova Antologia*, Feb. 15, 1894, and A. Torresin, "Statistica delle elezioni generali politiche," in *La Riforma Soc.*, Aug. 15, 1900. A serviceable biography is W. J. Stillman, *Francesco Crispi* (London, 1899), and an invaluable repository of information is M. Prichard-Agnetti (trans.), *The Memoirs of Francesco Crispi*, 2 vols. (New York, 1912). Two later studies by Italian writers are P. Penciolelli, *Le gouvernement parlementaire et la lutte des partis en Italie* (Paris, 1911); and S. Sighele, *Il nazionalismo e i partiti politici* (Milan, 1911).

middle class, and are strongest in Lombardy, Venetia, and Tuscany.

Of far greater importance are the Socialists. The remoter origins of Italian socialism can be traced to the first half of the nineteenth century; but the first effective propagators of the socialist creed south of the Alps were refugees from France after the suppression of the Commune in 1871, together with certain representatives of the International. For a time, socialism in the peninsula was hardly distinguishable from Bakuninian anarchism. But the same dissensions which had taken place in England, Belgium, France, and Germany arose in Italy also, and a schism, based both on tactics and on principles, gradually wedged apart the anarchistic elements led by Malatesta and Merlino and the moderate elements led by Costa, which accepted the parliamentary system, welcomed social reforms, and up to a certain point favored the co-operation of the different classes. The franchise law of 1882, tripling the electorate, influenced many anarchists to accept the parliamentary method of reform and to become simple socialists. In 1885 a socialistic workingmen's party, which soon numbered forty thousand members, was organized at Milan. The anarchists, however, captured the organization, and in the following year it was suppressed. In 1891 a socialist fortnightly review, *La Critica Sociale*, was founded at Milan; and in the same year was held, in the same city, the first Italian congress which was distinctively socialist. This congress, containing representatives of one hundred and fifty workingmen's societies, organized a party that may be regarded as the immediate forerunner of the Italian Socialist party of the present day. In 1892, at the congress of Genoa, came the final break with the anarchists, and since that date the socialism of Italy has differed in no essential regard from that of France, Germany, and other countries.

Between 1891 and 1893 the new party acted with the Right; but the policy of repression pursued by Crispi in 1894–95 and by Rudini and Pelloux in 1898–99 had the effect of gradually driving the radical groups, Republicans, Radicals, and Socialists, into alliance; and it is to this period that the origins of the present coalition of the groups of the Extreme Left are to be traced. During the years 1895–1900 the Socialists became, in effect, the advanced wing of a great parliamentary party, with a definite program of political and social reform. Included among the most essential features of this "minimum program" (dating from about 1895, and revised in 1900) were universal suffrage

for adults of both sexes, salaries for deputies and for members of municipal councils, a more humane penal code, the substitution of a national militia for the standing army, improved factory legislation, compulsory insurance against sickness, reform of the laws regulating the relations of landlords and tenants, nationalization of railways and mines, extension of compulsory education, abolition of duties on food, and a progressive income tax and succession duty.

The widespread dissatisfaction of Italians with the older parties, the practical character of the Socialist program, and the comparatively able leadership of the Socialist forces combined to give socialism an extraordinary growth in the two decades immediately preceding the Great War. In 1895 the party polled 35,000 votes and returned twelve members to the Chamber of Deputies. In 1897 it polled 108,000 votes and returned sixteen members. In 1904 it polled 301,000 votes (about one-fifth of the total number) and returned twenty-six members. Finally, in the elections of 1913 there were no fewer than 376 Socialist candidates, the popular vote rose to almost a million, and the party increased its quota in the Chamber to 44,[1] although the paid membership was only fifty-eight thousand. The voting strength of the party has been drawn mainly from the railway employees and from the industrial populations of the cities of the north. At the same time, it is to be noted that in no European country has socialism gained a larger hold upon the popular elements which, as a rule, are least appealed to by it, namely, the agricultural laborers. The proportion of votes cast for Socialist candidates is notably high in the Po valley, and it is growing in other agricultural regions, especially in Tuscany and the Romagna. It may be added that, as in France, socialism has attracted to its ranks many intellectual and literary leaders, including the criminologist Lombroso, the historian Ferrero, the novelist Di Amicis, and the poet D'Annunzio; and the proportion of lawyers, doctors, and professors is high.

Among features which Italian socialism has had in common with the socialism of France, Germany, and other lands, is a conflict between wings or factions of opposing tendencies, and most notably between the moderate evolutionary, "reformist" group led by Filippo Turati and the uncompromising, revolutionary group led by Enrico Ferri and the syndicalist Arturo Labriola. The question of "reformism" *vs.* revolutionism was debated as early as the congress of Imola in 1902, and the friction

[1] The number of socialist deputies of all shades was 78.

between the two tendencies became especially acute in 1904, when the revolutionists organized a general strike, which failed. In 1902 the reformists carried the day, but during the years 1904–08 the revolutionists, largely in consequence of the eloquence and leadership of Ferri, were in the ascendant. At the congress of Florence in 1908 the reformists regained control, and with slight interruptions they dominated the councils of the party until 1913. In that year the reformist Bissolati withdrew and organized the Social Reformist party, which has remained in the field to the present day. The elections of the same year gave the revolutionists a substantial majority of the regular Socialist party's seats in the Chamber.[1]

Re-entrance of Catholics into Politics. — An extremely important result of the steady progress of socialism and other forms of radicalism has been a new attitude on the part of the Holy See toward the participation of Catholics in politics.[2] In the elections of 1904 many Catholics who hitherto had abstained from

[1] On the parties of the Extreme Left the following may be consulted: Underwood, *United Italy*, Chap. vii; F. S. Nitti, *Il partito radicale* (Turin and Rome, 1907); P. Villari, *Scritti sulla questione sociale in Italia* (Florence, 1902); R. Bonghi, "Gli ultimi fatti parlamentari," in *Nuova Antol.*, Jan. 1, 1895; G. Alessio, "Partiti e programmi," *ibid.*, Oct. 16, 1900; G. Louis-Jaray, "Le socialisme municipal en Italie," in *Ann. des Sci. Polit.*, May, 1904; R. Meynadier, "Les partis d'extrême gauche et la monarchie en Italie," in *Quest. Dipl. et Colon.*, April 1, 1908; F. Magri, "Riformisti e rivoluzionari nel partito socialista italiano," in *Rassegna Naz.*, Nov. 16, 1906, and April 1, 1907; R. Soldi, "Le varie correnti nel partito socialista italiano," in *Giornale degli Econ.*, June, 1903. On parliamentary elections see G. Gidel, "Les élections générales italiennes de novembre 1904," in *Ann. des Sci. Polit.*, Jan., 1905; P. Quentin-Bauchart, "Les élections italiennes de mars 1909," *ibid.*, July, 1909; E. Lemonon, "Les élections italiennes [of 1913]," in *Rev. Polit. et Parl.*, Dec. 10, 1913; A. S. Hershey, "The Recent Italian Elections," in *Amer. Polit. Sci. Rev.*, Feb., 1914; T. Okey, "The General Elections in Italy," in *Contemp. Rev.*, Dec., 1913.

[2] The term "Catholic" as used in relation to Italian politics has a somewhat variable meaning. In the sense that it is not Protestant, the Italian people as a whole is Catholic. There are large elements, however — notably the Freemasons — over which the Church has no effective control, and there are still larger numbers who are loyal to the Church in spiritual matters but go their own way in everything else. Broadly, indeed, this may now be affirmed of the nation as a whole, and it is so asserted by a recent and competent writer, who says: "The Italian people, as a whole, are Catholics after a fashion of their own. In the Pontiff or parish priest they distinguish between the ecclesiastical dignitary and the citizen. When such a man arrays himself in the sacred vestments and mounts the pulpit or goes up to the altar to speak in God's name, the Italian bows his head, bends his knee, prays, and believes. . . . When, however, the priest has laid aside the stole and cope which raised him above ordinary mankind, leaves pulpit and altar, and becomes once more an ordinary man, then the Italian no longer considers himself obliged to believe and accept blindly what the priest says to him. He will talk and argue with him, and if the two agree, so much the better, if not, so much the worse for the priest. The Italian people goes its own way." H. Zimmern and A. Agresti, *New Italy* (New York, 1920), 37–38.

voting joined with the Government's supporters at the polls in an effort to check the growing influence of the radical groups, justifying their action by the argument that resistance to socialism is a fundamental Catholic obligation. Pope Pius X was prepared to admit the force of the contention, and in June of the following year he issued an encyclical which made it the duty of Catholics everywhere, Italy included, to share in the maintenance of social order, and permitted, and even enjoined, that they should take part in political contests in defense of social order whenever and wherever it was obviously menaced. At the same time, such participation must be, not indiscriminate, but disciplined. It must be carried on under the direction of the ecclesiastical hierarchy, and with the express approval of the Vatican. Theoretically, and as a general rule, the *Non Licet* remained. But where the rigid application of the law would open the way for the triumph of the enemies of society and of religion (as, from the papal point of view, socialists invariably are), the rule, upon request of the bishop and sanction by the Holy See, was to be waived. A corollary of this new policy was that, under certain circumstances, Catholics might not merely vote but also stand for parliamentary seats. The encyclical prescribed that such candidacies should be permitted only where absolutely necessary to prevent the election of an avowed adversary of the Church, only where there was a real chance of success, and only with the approbation of the proper hierarchical authorities; and even then the candidate should seek office not *as* a Catholic, but *although* a Catholic.[1]

Up to 1914, this partial lifting of the *Non Licet* had two clear effects. In the first place, it considerably stimulated the political activities of the Catholics. Already a small Catholic party had come into the field, which was opposed to socialism, the secularization of the state, divorce, and all purely lay organizations, yet was not unfriendly to the Italian government; and in the elections of 1909 and 1913 the number of Catholic voters and of Catholic candidates showed a distinct increase. In 1913 the clerical group in the Chamber of Deputies was raised to 35; and it gave promise of attaining considerable coherence and influence. In addition to standing for the principles already mentioned, it urged social reform, *e.g.*, factory legislation, workingmen's insurance, coöperative enterprises, and a wider distribution of land, with all the arguments, if not with all the vehemence, of the Socialists. A second result of the relaxation of the papal

[1] The idea is expressed in the phrase *cattolici deputati, si, deputati cattolici, no.*

ban was, on the other hand, a quickening of the anti-clerical spirit, and a perceptible strengthening of the Radical-Republican-Socialist *bloc*. Indeed, it seemed not unlikely that by providing the Left with a solidifying issue the papacy might yet prove to have rendered a service to the very elements which it had set out to destroy.

The restraints upon political activity on the part of good Catholics were still farther relaxed in the period of the Great War. Indeed, they may be said practically to have disappeared at that time, and it is a fair question whether they will ever be revived. Unlike the Socialists, who kept up their opposition to Italy's participation in the war even after her delayed decision was made, the Catholics were unanimous in their patriotism; even the clergy accepted the situation and threw its full influence as a class on the side of Italian victory. Nor was the intention merely to support the national cause while the fighting was going on. The new era of national and international reconstruction seemed to call no less insistently for Catholic thought and action, and to promise even larger opportunity to contribute to the shaping of the future Italy and the future world. Accordingly, on January 19, 1919, — two months after the armistice, and almost coincident with the convening of the peace conference at Paris, — a new Catholic party was proclaimed, with the sanction of the Vatican, if indeed the project did not emanate from that quarter. The manifesto was addressed to "all free and strong men who at this solemn moment feel it their duty to work for the supreme benefit of their country without prejudice or preconception, so that united they may help to realize the ideals of justice and freedom." Stress was laid on the necessity that political organizations everywhere should, while the representatives of the victorious nations were working out the terms of peace at Paris, do everything in their power "towards the reënforcement of those principles which will keep far from us the prospect of war, set the nations on a firm foundation, and make of social justice a real thing." The pronouncement was thus full of the spirit of the times — of the peace conference, the league of nations, and the "fourteen points."

Upon purely Italian questions the platform was unusually explicit. It demanded decentralization of administration and favored a state which would carefully respect the family, the class, the commune, personal dignity, and individual initiative. It advocated proportional representation, woman suffrage, and an elective Senate directly representing the national academic

administrative, and municipal bodies. It urged reform of the judicial system and of the methods of legislation. Most significant of all, it made no mention of a revival of the temporal power; and in demanding liberty for the Church in rights and interests of a purely spiritual nature, it recognized that the state as such was not at fault, but only certain anti-clerical and skeptical or atheistic organizations, notably the Freemasons, which had ridiculed and persecuted loyal Catholics in a variety of ways.

The new party — to which was given the name People's, or Popular, party — was a conglomerate of unions, associations, and leagues, with conservative tradition here, democratic tendencies there, and a Left wing differing but little at most points from the Socialists. None the less, it promptly struck root, and at the parliamentary election of November 16, 1919, won a total of 101 seats, which was exceeded by only two party quotas in the new Chamber. This was indeed a notable triumph, considering the former anti-clerical tone of Parliament and politics. The reasons for it are not altogether clear, but important factors undoubtedly were the force of the appeals of Pope Benedict XV and other Catholic authorities to the popular desire for permanent peace, the feeling of many people that the new party offered much that was attractive in the Socialist platform without certain features of the latter to which they objected, and the skill with which the Catholic program was brought into line with deeply embedded ideas and traditions, and especially with the latent but profound aptitude of the Italian for the things of the spirit.

The new Catholic phalanx thus introduced in the Chamber of Deputies in 1919 was entirely loyal to the government and was expected to serve as a bulwark of law and order in the unsettled times of national recovery and reconstruction. As a naturally conservative element, it seemed likely to be the principal counterweight to the Socialists. But it must be noted that the Socialists were no less successful in 1919 than the Catholics. They raised their quota in the Chamber from 40 to 156, which became by a wide margin the largest of the party groups.[1] Aside from the Catholics, they alone went into the campaign with a definite program, and they profited equally with the Catholics from the national war-weariness and the reaction of the public mind against

[1] The complete party representation, employing the party names in vogue in 1919, was as follows: Socialists, 156; Liberals and Conservatives, 132; Catholics, 101; Democrats, 80; Social Reformers, 16; Republicans, 15; Giolittians, 8. The Social Reformers form a separate socialist party, under the leadership of Bissolati.

militarism. They won few seats in the south; not a single Socialist was elected from Sicily. But they swept the industrial centers of the midlands and the north. Rarely, however, have so many voters remained away from the polls. In Naples only thirty-five per cent voted, in Rome only twenty-nine per cent, throughout the country as a whole hardly fifty per cent. This suggests, not only that the mass of the newly enfranchised Italians value their electoral privileges lightly, but that the success of both the Catholics and the Socialists in 1919 may be accounted for in part by the abstention of electors; and the testimony of observers bears out the conjecture that it was the Catholic and Socialist voters who went to the polls most freely, for the reason that their parties alone were able to make a positive appeal in behalf of a definite program. In the French elections of 1919 the Socialists, as has been pointed out,[1] lost heavily, not alone because the new system of proportional representation worked against them, but because the nation was still living on the lofty plane of patriotism which it had occupied during the war and was still actuated by the spirit of the *union sacrée*. The Italian elections, on the other hand, took place when the people were disappointed and depressed. How far, therefore, the results in either case were to be accepted as indicating the real balance of political opinion and as marking out the lines of future party history, no observer, however competent, could judge with any degree of confidence.[2]

[1] See p. 500.

[2] On party developments in Italy, mainly since 1914, see H. Zimmern and A. Agresti, *New Italy* (New York, 1920), Chaps. ii–iii; E. Lemonon, "Le parti catholique en Italie," in *Rev. Polit. et Parl.*, Aug., 1913, and "Les socialistes italiens et la guerre," *ibid.*, Mar., 1915; R. Murri, "Political Aspect of the Religious Problem in Italy," in *Contemp. Rev.*, May, 1914; M. Pantaleoni, "Problèmes italiens d'après guerre," in *Jour. des Écon.*, June, 1916; F. Crispolti, "Il partito popolare italiano," in *Nuova Antol.*, Feb. 16, 1919; A. Livingston, "Socialist Labor Organization in Italy," in *N. Y. Nation*, Feb. 22, 1919; A. Pauphilet, "The New Italian Chamber," in *New Europe*, Dec. 18, 1919; E. Corradini, "The New Parliament at Rome," in *Nineteenth Cent.*, Jan., 1920; and L. Hautecour, *L'Italie sous le ministère Orlando* (Paris, 1920). Italian attitudes and feelings during the Great War are described in S. Low, *Italy in the War* (London, 1916), and J. Bainville, *Italy and the War* (London, 1916).

CHAPTER XXXI

THE CONSTITUTIONAL SYSTEM

Land and People. — For hundreds of years the federal republic of Switzerland has been a fruitful laboratory of theoretical and practical politics. Here was first and most fully tested, on the soil of modern Europe, the federal plan of government. Here were born the twin principles of the popular initiative and referendum. Here, in more recent times, the plural executive of a non-cabinet type has been deliberately set over against the single executive as employed in the United States. Here the scheme of proportional representation in legislative bodies won some of its earliest triumphs. Here, too, the primary assembly as an agency of government has had its most notable survival outside of the towns of our own New England.

Federalism, direct government, and proportional representation have now become widely familiar, and Switzerland's political contributions and experiences attract less attention than in an earlier generation. Properly viewed, however, they still give the country an importance for the student of government quite out of proportion to its size and population. Notwithstanding the liberalization of government produced in many lands by the late war, it remains true, as an English student of popular institutions wrote more than twenty-five years ago, that "the sovereignty of the people, based upon the equal political and civil rights of all adult male citizens, has nowhere been so fully realized as in the expanding series of self-governing areas in which a Swiss citizen exercises his rights and duties as a member of a commune, a canton, and a federal state; nowhere have the relations between these larger and smaller areas of democracy grown up under conditions of such careful adjustment and so much promise of stability. Finally, there is no other state whose constitutions, federal, provincial, communal, express such implicit confidence in the present will of the majority and admit such facility of fundamental changes to meet new conditions.

Though there are one or two modern states where public control of industry and other forms of socialistic legislation and administration have been carried further than in Switzerland, it would probably be found that nowhere has substantial liberty and equality of opportunity, political, industrial, educational, and social, been more adequately secured than to the citizens in the more advanced cantons of Switzerland. For not only in political government do we find many able experiments in the art of reconciling individual liberty with rule by the majority, but outside of politics in the labor organizations, coöperative societies, consumers' leagues, and an immense variety of economic, philanthropic, educational, and recreative unions, we have evidence of the free play of a democratic spirit finding expression in social forms." [1]

This exceptional political and social development is not a product of chance. To a considerable extent, it arises from the physical character of the country itself. Switzerland contains only 15,976 square miles, which is one-thirteenth of the area of France, one-third of the area of the state of New York. Being so small, it is peculiarly adapted for the early development of republicanism. The mountain ranges, furthermore, cut it into tiny compartments, accentuate local differences, and make the federal form of government natural, if not inevitable. At the same time, the tiny subdivisions lend themselves to political experimentation, and especially to the establishment of government in its most simple and direct forms. Government by primary assembly, for example, becomes entirely feasible where any voter can leave his home in the morning, afoot if he likes, and arrive at the central meeting-place by noon. Finally, the very soil and atmosphere of a rugged country like Switzerland breed ideas of liberty, equality, democracy; witness Greece in ancient times, Scotland in modern centuries.

To these physical conditions making for separatism and democracy must be added other influences arising from the character of the people. Few populations living within an area so restricted are more heterogeneous. First, there are the differences of race, reflected in a general way in the statistics of language. At the census of December 1, 1910, the total population was 3,753,293. Of this number, 69 per cent spoke German, 21.1 per cent spoke French, 8 per cent spoke Italian, and approximately one per cent spoke a dialect known as Romansch. German was the prepon-

[1] H. D. Lloyd, *A Sovereign People, a Study of Swiss Democracy* (New York, 1907), 1–2.

derating tongue in fifteen of the twenty-two cantons, occupying the central and western portions of the country; French in the five westernmost cantons; and Italian in the single southern canton of Ticino. Then there are the differences of religion. In 1910, 56.7 per cent of the people were Protestants; 42.8 per cent were Roman Catholics; and .5 per cent were Jews. Practically all of the Italians are classed as Catholics; but among the Germans and the French the lines of race and religion by no means coincide. Protestants were, in 1910, in a majority in twelve cantons and Catholics in ten. Finally there are important economic cleavages. Switzerland is predominantly an agricultural and dairying country. But manufacturing industries are highly developed, particularly in the northern and western cantons; and the differing interests of the agriculturists and the industrial class sometimes become important issues of practical politics. It is essential to observe, however, that both industrial and agricultural conditions are favorable to democracy. Factories are usually small; much manufacturing is carried on in the homes of the people; capitalism has no such grasp upon industry as in other countries. Similarly, the land is owned, not by great proprietors, but by the masses. There are upwards of 300,000 small holdings, averaging less than twenty acres; and these support two million people, or more than half of the republic's population.

Political Development to 1815. — In the form in which it exists to-day, the Swiss federation is a product of the middle and later nineteenth century. Its origins, however, are to be traced to a far remoter period. Beginning with the alliance of the three forest cantons of Uri, Schwyz, and Unterwalden in 1291,[1] the federation was built up through the gradual creation of new cantons, the splitting of old ones, the reorganization of dependent territories, and the development of a crude political union intended almost exclusively for purposes of defense against a common foe, the Habsburgs. When, in 1798, the French Directory, at the instigation of Napoleon, arrogated to itself the task of revolutionizing Switzerland, the federation consisted of thirteen cantons.[2] With it were associated, however, certain *Zugewandte Orte*, or allied districts, of which some later became cantons, and also a number of *Gemeine Vogteien*, or subject territories. The federation had never developed a high degree of unity, and at the close

[1] For an English version of this "Perpetual League," see J. M. Vincent, *Government in Switzerland* (New York, 1900), 285–288.

[2] Luzern joined the alliance in 1332; Zürich in 1351; Glarus and Zug in 1352; Bern in 1353; Freiburg and Solothurn in 1481; Basel and Schaffhausen in 1501; and Appenzell in 1513.

of the eighteenth century it was a pure *Staatenbund*, or league of substantially autonomous states. Its only organ of common action was a diet, in which each canton had one vote. This body had no regular time of meeting; its members could act only upon instruction from their own governments, and there were no means by which the will of a majority could be enforced upon the minority. As one writer has observed, the central government of Switzerland at this time was even weaker than that of the United States under the Articles of Confederation.[1] The cantons themselves had governments of widely differing kinds. Six of the older rural divisions — Uri, Schwyz, Unterwalden, Glarus, Zug, and Appenzell — were pure democracies ruled by primary assemblies. Of the seven urban states, three — Zürich, Basel, and Schaffhausen — had representative governments based upon a moderately broad franchise; the other four — Bern, Luzern, Freiburg, and Solothurn — were close oligarchies. The political institutions of all were, in large measure, such as had been carried down from the Middle Ages.[2]

As a result of the French intervention, the loosely organized federation was transformed, almost over night, into a centralized, bureaucratic "Helvetic Republic," nominally independent but actually tributary to France. Under the terms of a written constitution, modeled closely on the French instrument of the Year III (1795), the country was given a unitary government consisting of a bicameral legislature — a Grand Council of deputies elected indirectly in the cantons in proportion to population and a Senate of four members from each canton — and a plural executive designated, as in France, a Directory, and elected by the senators and councilors.[3] With the five directors

[1] R. C. Brooks, *Government and Politics of Switzerland* (Yonkers, 1918), 34.

[2] The origins of the federation are described briefly in Brooks, *Government and Politics of Switzerland*, 16–35, and Vincent, *Government in Switzerland*, 3–26, and more fully in W. D. McCrackan, *Rise of the Swiss Republic* (2d ed., New York, 1901). Important treatises include A. Rilliet, *Les origines de la confédération suisse* (Geneva, 1868); P. Vauchier, *Les commencements de la confédération suisse* (Lausanne, 1891); and W. Oechsli, *Die Anfange der schweizerischen Eidgenossenschaft* (Zürich, 1891). There is a French translation of the last-mentioned excellent work under the title *Les origines de la confédération suisse* (Bern, 1891). The origins of the Swiss Confederation were described in a scientific manner for the first time in the works of J. E. Kopp: *Urkunden zur Geschichte der eidgenössischen Bünde* (Leipzig and Berlin, 1835), and *Geschichte der eidgenössischen Bünde* (Leipzig and Berlin, 1845–52). The texts of all of the Swiss alliances to 1513 are printed in J. von Ah, *Die Bundesbriefe der alten Eidgenossen* (Einsiedeln, 1891).

[3] This constitution was drawn up in Paris, at Napoleon's suggestion, by a magistrate from Basel, Peter Ochs, then on a mission to the French government. Other Swiss representatives were consulted, and the final changes were made by the French Directory.

were associated, for administrative work, four appointed heads of departments. For purposes of local government the country was laid out in twenty-three districts, called cantons,[1] but corresponding in only a few instances to the pre-existing divisions of that name. Organized on the model of the new French departments, each had an elective legislature and an appointed prefect to serve as a cantonal executive and to look after the interests of the central government. Much-needed reforms were introduced throughout the country at large, including a uniform citizenship, a common suffrage, freedom of speech and of the press, and unity in the penal law, the coinage, and the postal service. French control, however, was resented, and the new governmental system failed to strike root. Following a series of riots and other disorders, the constitution of 1798 was, on July 2, 1802, replaced by a new but similar instrument, drawn up by an assembly of notables, convoked at Bern. The popular verdict on this document was unfavorable by a majority of twenty thousand. The vote, however, was light; and on the plea that abstentions were tantamount to tacit approval, the authors of the instrument put their plan into effect. Naturally, dissatisfaction was not allayed.[2]

Napoleon was wise enough to recognize that large concessions would have to be made. Hence, calling to Paris a deputation of Swiss representatives, he worked out with them a new scheme, which was promulgated, February 19, 1803, under the name of the Act of Mediation. By the terms of this agreement, the country became once more a federation of self-governing cantons, with, however, a central government of decidedly larger powers than before 1798.[3] The right, for example, to make war and to conclude treaties was vested exclusively in the new federal Diet. To the thirteen original cantons were added six new ones — Aargau, Thurgau, Vaud, Ticino, and the Grisons (St. Gall and Graubünden) — the first four formed from districts which under the old régime had been subordinate territory, the last two having formerly been "allied states." In the Diet each of six cantons (Bern, Zürich, Vaud, Aargau, St. Gall, and Graubünden) which had a population in excess of 100,000 was given two votes. All others retained but one. The executive authority of the Confederation was vested by turns in the six cantons of Bern, Freiburg, Luzern, Zürich, Basel and Solothurn, the "directorial"

[1] It was now, indeed, that the term first appeared in official usage.

[2] McCrackan, *Rise of the Swiss Republic*, 295–312. Cf. L. Marsauche, *La confédération helvétique* (Neuchâtel, 1890).

[3] It is in this instrument that the Confederation was for the first time designated officially as "Switzerland."

canton in any given year being known as the *Vorort*, and its chief magistrate as the *Landamman*, of the Confederation. The principle of centralization was in large part abandoned; but the recently established equality of civil rights was not molested. The accession of the newly created cantons, containing large numbers of people who spoke French, Italian, and Romansch, caused the league henceforth to be less predominantly German than formerly.[1]

The Act of Mediation, which on the whole was not unacceptable to the majority of the Swiss people, save in that it had been imposed by a foreign power, continued in operation until 1813. During the decade Switzerland was practically a ward of France. With the decline of Napoleon's power the situation was altered, and on December 29, 1813, fourteen of the cantons, through their representatives assembled at Zürich, declared the instrument to be no longer in effect. Led by Bern, eight of the older cantons determined upon a revival of the system in operation prior to 1798, involving the reduction of the six most recently created cantons to their former inferior status. Prompted by Tsar Alexander I, however, the Allies refused to approve this program; and, after the Congress of Vienna had arranged for the admission to the confederacy of the three allied districts of Valais, Geneva, and Neuchâtel, there was worked out, by the Swiss themselves, a constitution known as the "Federal Pact," which was formally approved by the twenty-two cantons at Zürich, August 7, 1815.[2]

This instrument still farther loosened the ties that bound the federation together; the cantons recovered, indeed, almost all of the independence lost in 1798. A Diet was again set up in which each canton, regardless of population, had one vote.[3] Its sessions, like those of the cantonal legislatures, were to be behind closed doors; and the only new power that was given it was that of dispatching troops into any district threatened with disorder. It could declare war and peace, but only with the consent of three-fourths of the cantons. Federal executive authority was vested, in rotation, in the cantonal executives of Zürich,

[1] *Cambridge Modern History*, IX, Chap. iv (bibliography, pp. 805–807). The best general work on the period 1798–1813 is W. Oechsli, *Geschichte der Schweiz im XIX. Jahrhundert* (Leipzig, 1903), I.

[2] This statement needs, however, to be qualified by the observation that the half-canton Lower Unterwalden approved the constitution August 30, and only when compelled by force to do so.

[3] Three of the cantons — Unterwalden, Basel, and Appenzell — were divided into half-cantons, each with a government of its own; but each had only half a vote in the Diet.

Luzern, and Bern, the period of service to be in each case two years. Practically all of the guarantees of common citizenship, religious toleration, and individual liberty which the French had introduced were rescinded, and during the decade following 1815 the trend in most of the more important cantons was not only particularistic but also distinctly reactionary. The smaller and poorer ones retained their democratic institutions, especially their *Landsgemeinden*, or primary assemblies; but it was only after 1830, and largely under the stimulus of the revolutionary movements of that year, that the majority of the cantonal governments underwent that regeneration in respect to the suffrage and the status of the individual which lay behind the transforming movements of 1848.[1]

The Constitution of 1848 and the Revision of 1874. — The period between 1830 and 1848 was marked by not fewer than thirty revisions of cantonal constitutions, all in the direction of broader democracy.[2] The purposes of the liberal leaders, however, extended beyond the democratization of the individual cantons. The thing at which they ultimately aimed was the establishment of a closer union, and therefore of a stronger nation. On motion of the canton of Thurgau, a committee was authorized in 1832 to draft a revision of the Pact. The resulting instrument preserved the federal character of the state, but provided for a permanent national executive, a national court of justice, and centralization of the customs, postal service, coinage, and military instruction. By a narrow majority this project was defeated in 1833. It was too radical to be acceptable to the conservatives, and not sufficiently so to please the advanced liberals.

The obstacles to be overcome — native conservatism, intercantonal jealousy, and ecclesiastical heterogeneity — were very formidable. More than once the Confederation seemed on the point of disruption. In September, 1843, seven Catholic cantons,[3] emulating an example repeatedly set by other groups, entered into an alliance, known as the *Sonderbund*, for the purpose of defending their peculiar interests, and especially of circumventing any reorganization of the confederacy which should

[1] B. Van Muyden, *La suisse sous le pacte de 1815*, 2 vols. (Lausanne and Paris, 1890–92); A. von Tillier, *Geschichte der Eidgenossenschaft während der sogen. Restaurationsepoche, 1814–1830*, 3 vols. (Bern and Zürich, 1848–50); *ibid.*, *Geschichte der Eidgenossenschaft während der Zeit des sogeheissenen Fortschritts, 1830–1846*, 3 vols. (Bern, 1854–55). On the democratic movement in the cantons see Borgeaud, *Adoption and Amendment of Constitutions*, 264–272.

[2] McCrackan, *Rise of the Swiss Republic*, 325–330.

[3] Luzern, Uri, Schwyz, Unterwalden, Zug, Freiburg, and Valais.

involve the lessening of Catholic influence and privilege; and, in December, 1845, this affiliation was converted into an armed league. In November, 1847, the Diet, in session at Bern, decreed the dissolution of the *Sonderbund;* but the allied cantons refused to obey, and only after a nineteen-day armed conflict was the obstructive league suppressed.[1]

The war was worth while, because the crisis produced by it afforded the liberals an opportunity to bring about the adoption of a wholly new constitution. For a time the outlook was darkened by the possibility of foreign intervention, but the outbreak of the revolution of 1848 at Paris effectually removed that danger,[2] and in the end the upheaval through which Europe was passing proved rather favorable than otherwise to the cause. The upshot was that, through the agency of a Diet committee of fourteen, constituted, in fact, February 17, 1848 — one week prior to the overthrow of Louis Philippe — the nationalists incorporated the reforms they desired in a constitutional *projet*, and this instrument the Diet forthwith revised slightly and placed before the people for acceptance. By a vote of $15\frac{1}{2}$ cantons (with a population of 1,897,887) to $6\frac{1}{2}$ (with a population of 292,371), the new constitution was approved.

The adoption of this organic law was a distinct victory for the Liberal, or Centralist, party. During the next two decades this element kept complete control of the federal government and carried out many centralizing reforms. A federal postal system was created; the telegraphs were nationalized; a national coinage was instituted in 1850; uniform weights and measures were established; and a strong foreign policy was maintained. Finally, in 1872, the more radical wing of the party brought forward a new constitution confirming and extending this centralist bent. The first effort met with failure.[3] A new draft, however, was prepared; and on April 19, 1874, by a vote of $14\frac{1}{2}$ cantons against $7\frac{1}{2}$, it was adopted. The popular vote was 340,199 to 198,013. Amended subsequently upon several occasions,[4] the instrument of 1874 is the fundamental law of the Swiss federation to-day, although it is essential to observe that it represents only a re-

[1] A. Stern, "Zur Geschichte des Sonderbundes," in *Historische Zeitschrift*, 1879; W. B. Duffield, "The War of the Sonderbund," in *Eng. Hist. Rev.*, Oct., 1895; and P. Matter, "Le Sonderbund," in *Ann. de l'École Libre des Sci. Polit.*, Jan. 15, 1896.

[2] Austria, Prussia, and France were inclined to intervene on behalf of the Sonderbund. Lord Palmerston, the British foreign secretary, exercised a restraining influence.

[3] Borgeaud, *Adoption and Amendment of Constitutions*, 297–299.

[4] For the methods of constitutional amendment see pp. 593–594.

vision of the constitution of 1848. As a recent writer has said, "the one region on the continent to which the storms of 1848 brought immediate advantage was Switzerland, for to them it owes its transformation into a well-organized federal state."[1]

The text of the constitution as it stands to-day is arranged in three chapters, subdivided into 123 articles. Amendments are not listed at the end, as in the constitution of the United States, but are inserted at the appropriate places through the document.[2] There is, however, an appendix containing a half-dozen articles of a temporary character. The first and longest chapter, under the title "general provisions," deals mainly with personal rights, citizenship, the structure and powers of the federation, and the status of the cantons. The second, entitled "federal authorities," provides for the structure and functions of the executive Federal Council, the Federal Court, and the two branches of the Federal Assembly. The third chapter sets forth the various methods by which the constitution can be amended. The document runs to almost twice the length of the constitution of the United States and abounds in provisions on subjects — hunting and fishing rights, qualifications for the professions, restraint of epidemics, suppression of gambling, and what not — that are commonly left to be covered by ordinary legislation. In a few instances these provisions are of doubtful value or are plainly unnecessary. Thus an amendment of 1893 forbidding the killing of animals "without benumbing before the drawing of blood" is admittedly an expression of anti-Jewish prejudice. In the main, however, the constitution's seeming diffuseness arises from the practical necessity, under a federal form of government, of defining the spheres and powers of the several authorities in a good deal of detail — a consideration impressed on Swiss statesmen not only by the earlier experience of their own country but by the well-known difficulties that had already arisen in the United States from the brevity of the federal organic law on more than one important subject. The same tendency to detail, if not prolixity, appears in the constitution of the former German

[1] W. Oechsli, in *Cambridge Modern History*, XI. 234. A brief survey of the constitutional history of Switzerland from 1848 to 1874 is contained in Chap. viii of the volume mentioned (bibliography, pp. 014–018). Two excellent works are C. Hilty, *Les constitutions fédérales de la confédération suisse: exposé historique* (Neuchâtel, 1891), and T. Curti, *Geschichte der Schweiz im XIX. Jahrhundert* (Neuchâtel, 1902).

[2] It is partly on this account that the Swiss constitution is less satisfactory in the arrangement of its contents than is the American. On the modes of amendment see p. 593.

Empire, although in that case certain other and special motives were involved.[1]

Nature of Federal Government. — Switzerland is the first country that we have studied which has a federal form of government; and before proceeding to a description of its political system it will be well to consider briefly what federal government is. It goes without saying that in every state the powers of government are so numerous, complicated, and onerous that they can be carried out only by being intrusted to many different hands. Two main bases of distribution suggest themselves — territorial and functional. Distribution is made territorially when the state is laid out in one or more sets of districts, and to each district, equipped with the requisite machinery, is assigned the exercise of certain powers. It is made functionally when legislative powers are confided to one authority or group of authorities, executive functions to another, judicial functions to a third, and so on. As a matter of fact, both forms of distribution are employed in practically all states.

Obviously, federal government springs from distribution on the territorial basis. But the precise manner in which it arises is not so generally understood. What we have in mind when we speak of a territorial distribution of governmental functions is, not the uniform exercise of a given power, such as the collection of customs duties, in a series of administrative districts by a set of officials belonging to the central government, but the assignment of aggregates of governmental power to units or areas of a *political* nature, to be exercised largely or wholly at their discretion (and therefore not uniformly) and through organs that belong to them rather than to the central government. Such divisions are the states and counties of the United States, the counties and boroughs of England, the departments and communes of France, the cantons of Switzerland. The reasons for turning over governmental power to divisions of these kinds are not difficult to discover. One purpose is to relieve the central government of an intolerable burden of work and responsibility. But the main consideration is that many of the tasks of government relate exclusively to individual sections of the country, which can therefore logically be made to assume the main re-

[1] See p. 620. The text of the Swiss constitution will be found in Lowell, *Governments and Parties*, II, 405–531. English versions are printed in Dodd, *Modern Constitutions*, II, 257–290; McCrackan, *Rise of the Swiss Republic*, 373–403; Vincent, *Government in Switzerland*, 289–332; and *Old South Leaflets*, General Series, No. 18. A good collection of recent documents is P. Wolf, *Die schweizerische Bundesgesetzebung* (2d ed., Basel, 1905–08).

sponsibility for them and can see that they are exercised in accordance with variations of local conditions and needs.

The actual structure of a governmental system is determined mainly by the method employed in making this territorial distribution of powers. There are two ways of doing it. A scheme of distribution, stipulating what the divisional areas of government shall be and what functions they shall have, may be laid down in the constitution. In this case the distribution is made by the political sovereign, and the resulting governmental agencies, central and local, are coördinate in the sense that both derive their authority from direct grant of the sovereign and neither can encroach upon the field occupied by the other unless the sovereign gives its consent. On the other hand, the constitution may go no farther than to create a single organization, endowed with full governmental powers, to which is left the task of providing for such territorial distribution as may be deemed desirable. According as the one plan or the other is followed, the resulting form of government is federal or unitary. The distinction arises, not from the mere fact of a territorial distribution of powers, for there is such a distribution in all modern governments, nor yet from the amount or kinds of power delegated to the local areas, but from the authority by which the distribution is made. To be concrete, the government of the United States is federal, because the sovereign people have provided in the Constitution equally for the central, national government and for the governments of the principal divisional areas, *i.e.*, the states; it is not at all for the central, federal agencies to say what powers or what organization the states shall have. On the other hand, the government of France is unitary, because there is but a single integral government, with its seat at Paris, a government which has created the departments, *arrondissements*, and other local political and administrative areas for its own purposes, and which is free to alter these subordinate districts in their organization or powers at any time, or even to abolish them altogether.

The relative advantages of the two types have been much debated. The federal plan offers a natural compromise between a complete surrender of local autonomy, on the one hand, and a loose, weak confederation on the other, such as Switzerland had unpleasant experience with in the eighteenth century and the United States in 1781–89; and where, as in both of these instances, the establishment of a true federation is as far as the component states can be induced to go, the superiority of a unitary system becomes merely an academic question. Furthermore,

federalism, as Bryce observes, allows experiments in local legislation and administration which could not safely be tried in a large country having a unitary system of government. At the same time, it supplies the best means of developing a new and vast country by allowing the particular localities to develop their special needs in the way they think best.[1] On the other hand, federal government tends to be excessively complex, to lack unity, and to be not easily adaptable in powers and functions to changing social and economic conditions. On the whole, it is less in favor than formerly; and it is significant that both South Africa in 1900 and republican China in 1911 deliberately chose the unitary type, although in both instances the conditions were present which form the natural basis of a federal system.[2]

The Nation and the States. — The government of Switzerland is a true example of the federal form.[3] The sovereign is, as in the United States, the people, or at all events the electorate, considered as a whole. This sovereign people has superimposed, for certain ends, a national government upon a series of state, or cantonal, governments; it has allotted many functions to this national government and has left many others in the hands of the cantonal authorities; and national and cantonal governments alike rest immediately, as do the national and state governments in the United States, upon the people. In our own country there was long a deep-seated difference of opinion as to whether the states were "sovereign"; the Civil War resulted quite as much from disputes upon this question as from disagreement on the

[1] *American Commonwealth*, I, 351.

[2] For a fuller presentation of the nature of federal government see Willoughby, *Government of Modern States*, Chap. x. Cf. R. G. Gettell, *Introduction to Political Science* (Boston, 1910), Chap. xiv, and W. W. Willoughby, *The Nature of the State* (New York, 1896), Chap. x.

[3] The principal treatises on the Swiss constitutional system are J. J. Blumer, *Handbuch des schweizerischen Bundesstaatsrechtes* (2d ed., Schaffhausen, 1877–87); J. Schollenberger, *Bundesverfassung der schweizerischen Eidgenossenschaft* (Berlin, 1905); *ibid.*, *Das Bundesstaatsrecht der Schweiz Geschichte und System* (Berlin, 1902); and W. Burckhardt, *Kommentar der schweizerischen Bundesverfassung* (2d ed., Bern, 1914). Two excellent briefer treatises are N. Droz, *Instruction civique* (Lausanne, 1884), and A. von Orelli, *Das Staatsrecht der schweizerischen Eidgenossenschaft* (Freiburg, 1885), in Marquardsen's *Handbuch*. The best treatises in English on the Swiss governmental system are Brooks, *Government and Politics of Switzerland*, and F. Bonjour, *Real Democracy in Operation* (New York, 1920), although an older book, Vincent, *Government in Switzerland*, is excellent. Other earlier books include B. Moses, *The Federal Government of Switzerland* (Oakland, 1889), and B. Winchester, *The Swiss Republic* (Philadelphia, 1891). Mention should be made of A. B. Hart, *Introduction to the Study of Federal Government* (Boston, 1891). An excellent critical bibliography of Swiss constitutional development and governmental organization is printed in Brooks, *op. cit.*, 386–416.

slavery issue. We now understand more clearly that true sovereignty belongs to the people, and that it is only the right to exercise certain powers of sovereignty that the governments of our American nation and states, or of any other political units or divisions, can be regarded as possessing. Only with this point in mind are we prepared to understand the interesting provision of the Swiss constitution that "the cantons are sovereign so far as their sovereignty is not limited by the federal constitution; and, as such, they exercise all the rights which are not delegated to the federal government."[1] This means simply that, as in the United States, the national government is a government of enumerated, delegated powers, while the state governments are governments of residual powers, *i.e.*, governments possessing all powers conferred on them by the people living under them and not withdrawn or prohibited in the federal constitution. Neither nation nor state is "sovereign" save in the sense that it is the custodian of sovereign powers intrusted to it; and in this sense both are sovereign. As has been pointed out, the delimitation of powers in the Swiss constitution, especially those of a legislative nature, is far more minute than in the constitution of the United States, with the result that few serious differences of interpretation have arisen.

On the analogy of the United States, where the nation guarantees to each state a republican form of government, the Swiss federation guarantees to the cantons their territory, their "sovereignty" (within the limits fixed by Article 3 quoted above), their constitutions, the liberty and rights of their people, and the privileges and powers which the people have conferred upon those in authority. The cantons are empowered, and indeed required, to call upon the federation for the protection of their constitutions, and it is stipulated that such protection shall be extended in all instances where it can be shown that the constitution in question contains nothing contrary to the provisions of the federal constitution, that it assures the exercise of political rights according to republican forms, that it has been ratified by the people, and that it can be amended at any time by a majority of the citizens.[2] Under these terms, every cantonal constitution, before becoming operative, and every amendment thereto, must be approved by both branches of the Federal Assembly. When admitting new states to the Union the American Congress scrutinizes their organic laws, and it may refuse admission until specified changes are made. After a state is once in the Union, how-

[1] Art. 3. Dodd, *Modern Constitutions*, II, 257. [2] Arts. 5–6. *Ibid.*, 258.

ever, this control of Congress virtually ceases. The state may adopt any number of constitutional amendments, or an entirely new constitution, without consulting either Congress or any other federal authority. Only in the case that Congress should decide that a state no longer had a republican form of government would that body seek to compel a constitutional change; and this it would do by refusing to seat the state's senators and representatives. Outside of this, the only means by which the federal government can control the character and contents of the constitution of a state already in the Union is through proceedings instituted in the courts. There are no courts in Switzerland with power to overrule a cantonal constitutional provision. But the federal legislature possesses that power fully and continuously.

Another important matter is the power of the federal government to deal with insurrection or other disorders in the states. In the United States the president is authorized to intervene to repress domestic disorder only in the event that federal authority or federal property is menaced, or on call of the state legislature or governor. In Switzerland, on the other hand, the federal government has a right to intervene for the restoration of order at any time, and with or without request from the cantonal authorities. Eleven such interventions have taken place since 1848, the most notable being in the Italian-speaking canton of Ticino in 1889–90.[1] Sometimes the good offices of federal arbitrators have proved sufficient, but on other occasions the use of troops has been required. With a view to averting civil wars, the cantons are forbidden to enter into alliances or treaties of a political nature among themselves, although they may conclude intercantonal conventions upon legislative, administrative, and judicial subjects, provided such conventions, upon inspection by the federal officials, are found to contain no stipulations contrary to the federal constitution or inimical to the rights of any canton. In the event of disputes between cantons, the questions at issue must be submitted to the federal government for decision, and the individual cantons must refrain from violence, and even from military preparations.

The Division of Powers. — As has been stated, the powers of government are distributed on the same principle as in the United States; that is, the federal government has whatever powers are expressly delegated to it, while the cantonal governments have all powers not prohibited to them. The powers given exclusively to

[1] Brooks, *Government and Politics of Switzerland*, 55.

the federal government fall into four main categories, according as they relate to foreign affairs, military affairs, finance, and public utilities and other internal services. Under certain restrictions, the cantons are permitted to make treaties with foreign states concerning border and police intercourse and the management of public property.[1] Otherwise, full control of external relations is vested in the national government. It alone can send and receive diplomatic representatives, declare war, make peace, and conclude treaties relating to tariffs, commerce, and most other matters.

The Swiss military system is in some respects unique. The constitution of 1848 established a universal obligation to perform military service, but left military administration in time of peace mainly in the hands of the cantons. The system proved unsatisfactory, and at the constitutional revision of 1874 the federation was given full control over the organization of the army, military instruction and equipment, and the conditions of exemption from service. These provisions are still in force,[2] and have been considerably amplified by a comprehensive military law of April 12, 1907, and by other legislation. The constitution retains an article declaring that the federation has no right to maintain a standing army, and that no canton or half-canton may, without permission of the federal government, have a standing force of more than three hundred men.[3] None the less, formal military instruction begins in the schools at the age of ten; at the age of nineteen every male Swiss is examined to determine his fitness for military duty; and liability for active service extends from the age of twenty to that of forty-eight. The system is so administered, however, that in peace time men are never required to be absent from their homes longer than sixty-five consecutive days; and the number of people who give their entire time to the army hardly exceeds two or three hundred. There is not even, in peace times, a commander-in-chief.[4]

The exclusive financial powers of the federal government as fixed in 1848 were the coining of money and the "maintenance of a monetary system." To these were added, in 1891, a monopoly of the issue of bank notes and other forms of paper currency.[5]

[1] Art. 9. Dodd, *Modern Constitutions*, II, 258.
[2] Arts. 19–22. *Ibid.*, 261–262.
[3] Art. 13. *Ibid.*, 257.
[4] For an excellent description of the Swiss military system see Brooks, *Government and Politics of Switzerland*, Chap. xi. Cf. "The Swiss System of National Defense," U. S. Senate Doc. 796, 63d Cong., 3d. Sess. (1915).
[5] Power to regulate such issues was conferred in the revised constitution of 1874.

Finally, as an outcome of a strong tendency to socialization during the past quarter-century, the federal government has acquired a large amount of exclusive control over public utilities and industries. The postal service, which before 1848 was wholly under control of the cantons, and from 1848 to 1874 was carried on by the federal government subject to an obligation to pay annual indemnities to the cantons, is now wholly federal and free of incumbrance. A law of 1851 brought telegraphs under the postal administration, and a resolution of 1878 added telephones to the growing federal monopoly. Railroads, which from 1852 to 1872 were private enterprises under cantonal control, and from 1872 to 1901 were private enterprises under federal control, have, since the last-mentioned date, been nationally owned, operated, and controlled.[1] Two monopolies of an industrial nature add considerably to the federation's powers. The first is a monopoly of the manufacture and sale of gunpowder, established in 1848 with a view to assuring the nation adequate supplies of this military necessity. The second is a monopoly of the manufacture and sale of distilled liquors, including alcohol for industrial uses. This monopoly, approved by a referendum of 1887, was established by virtue of a constitutional amendment adopted in 1885.[2]

General powers of legislation vested in the federal government, in some cases exclusively and in others concurrently with the cantons, are too numerous and complicated to be discussed here. They are far more extensive than the legislative powers of the United States. To take a single illustration, whereas our Congress is authorized to regulate only interstate and foreign commerce, the Swiss Federal Assembly can deal with commerce of every kind and under every condition. The whole trend of constitutional development since 1874, and especially since 1900, has been toward a broadening of the field of federal regulative action. Among amendments of this character, in addition to those already mentioned, may be cited that of July 11, 1897, giving the federation power to enact laws concerning traffic in food products; that of November 13, 1898, extending the federal legislative power over the domain of civil and criminal law; that of July 5, 1908, conferring upon the confederation power to enact uniform regulations concerning the arts and trades (thus bringing

[1] Nationalization took place under a law passed by the Federal Assembly in 1897 and ratified by a referendum of February 20, 1898. See Brooks, *Government and Politics of Switzerland*, Chap. ix.

[2] Art. 32 ii. Dodd, *Modern Constitutions*, II, 266–267.

substantially the entire domain of industrial legislation within the province of the federation); and that of October 25, 1908, placing the utilization of water-power under the supervision of the central authorities.

In one direction only is the power of the federal government more restricted than in the United States, *i.e.*, taxation. The basic principle of the fiscal systems of the two countries is the same, namely, that the federal government shall live mainly from the proceeds of indirect taxes and the state governments mainly from the yield of direct imposts. The American constitution, however, has from the first permitted Congress to lay direct taxes; and from time to time such imposts have been levied. Indeed, the old line of division is fast disappearing. The Swiss constitution originally empowered the federal government merely to lay customs duties on imports and exports. Moreover, it was stipulated that imports of materials essential for the manufactures and agriculture of the country, and of necessaries of life in general, should be taxed as low as possible, and that export taxes should be kept at a minimum. The proceeds of such taxes — together with the income from public property, the profits of the postal and telegraph services, the yield of the powder monopoly, and half of the receipts from the tax on military exemptions levied by the cantons — were expected to cover the federation's annual expenditures; if they failed to do so, the federation was authorized to levy upon the cantons "in proportion to their wealth and taxable resources."[1] Due mainly to the adoption of a protectionist policy, the customs receipts rose, between 1880 and 1910, from seventeen to eighty million francs; and the federation has never levied upon the cantons. Necessity of doing so was averted during the Great War, however, only by heroic measures. One such measure was a federal tax on incomes and property, authorized by a constitutional amendment of 1915, to be laid and collected one time only. Another was an amendment of 1917 conferring on the federation power, unlimited as to time, to levy a stamp tax on securities and commercial paper of many kinds, with the proviso that one-fifth of the proceeds should be paid to the cantons.[2]

The powers of the cantonal governments, being residual, are broad, undefined, and subject to constant change. Such description of them as can be undertaken belongs logically in another

[1] Art. 42. Dodd, *Modern Constitutions*, II, 269.

[2] Brooks, *Government and Politics of Switzerland*, Chap. viii; Vincent, *Government in Switzerland*, Chap. xix.

chapter.[1] They are, of course, not so extensive as under earlier constitutions; and the trend of constitutional development brings them within steadily narrowing limits. One farther aspect only of the canton's position needs to be mentioned here, namely, the large share which the cantonal government takes in the execution of federal law. In the United States the federal government enforces its laws almost entirely through its own officials; it could continue to function almost normally if the governments of the states were to be suddenly blotted out. In Switzerland, as was also true in Imperial Germany, the situation is far otherwise. The Swiss federal government has indeed its own machinery for several important branches of administration, *e.g.*, customs, posts, telegraphs, telephones, the gunpowder monopoly. But in other branches it depends very largely upon the coöperation of the cantonal authorities, working under a certain amount of federal supervision. This is true of the administration of railways, water-power, weights and measures, education, military exemption, and even the federal bank. One reason for following this plan is that it is economical; the costs entailed by a dual mechanism of administration is one of the main objections to the federal form of government. An even weightier reason is, however, that in many fields of governmental action the reluctant cantons have been induced to yield legislative control to the central government only by being permitted to exercise immediate control over the enforcement of the resulting laws.

Citizenship and the Protection of Individual Rights. — A question that is likely to lead to some confusion under a federal form of government is the basis and nature of citizenship. The constitution of the United States as put into operation in 1789 made use of the term "citizen," but nowhere defined it. It spoke of "citizens of the United States" and also of "citizens of the several states," from which might readily be inferred that citizenship was dual, *i.e.*, both national and state. Down to the Civil War, the states' rights school held that there were thus two kinds of citizenship; and in the Dred Scott decision (1856) the Supreme Court ruled that it did not follow that because a person had all the rights and privileges of a citizen of a state, he must be a citizen of the United States. The Fourteenth Amendment (1868), however, reversed this doctrine. "All persons born or naturalized in the United States," it says, "and subject to the jurisdiction thereof, are citizens of the United States and of the states wherein they reside." Technically, it may be

[1] See p. 575.

regarded that there is still a national citizenship and a state citizenship. But the two are inseparable, and the distinction is of no practical importance. Fundamentally, citizenship is national: any citizen of the United States who takes up his residence in a given state becomes a citizen of that state; no state can either bestow citizenship or withhold it.

The Imperial German constitution of 1871 provided that there should be "a common citizenship for all Germany," and that the citizens of every state should be treated "in every other state as natives."[1] It was reasonably plain that there were two citizenships, Imperial and state, and also that citizenship in the Empire was determined exclusively by citizenship in one of the individual states. A law of 1879 cleared up all doubt on the point. The situation in Imperial Germany was therefore the reverse of that in the United States: in the one country a person became a national citizen by virtue of being a state citizen; in the other, he becomes a state citizen by virtue of being a national citizen.

On this subject the Swiss constitution, too, is somewhat ambiguous. "Every citizen of a canton," it says, "is a Swiss citizen. As such he may participate, in the place where he is domiciled, in all federal elections and popular votes, after having duly proved his qualification as a voter."[2] This clearly means that citizenship is fundamentally cantonal — that, as in Germany, a person gains national citizenship through state citizenship. In the United States, as has just been noted, the process is the opposite. It is true that the Swiss constitution also provides that "federal legislation shall fix the conditions upon which foreigners may be naturalized." But in point of fact this has not been done. Rather, what happens is that the cantonal constitutions simply pass the matter one step farther on by providing that every citizen of a commune is a citizen of a canton.[3] The individual commune thus becomes a law unto itself in the matter, with the result of an enormous variation of practice from locality to locality. Some communes charge high fees and in other ways put naturalization beyond the reach of all but very few of their alien residents; others set up practically no restrictions. Undoubtedly it would be better for the federal government to avail itself of its power to establish uniform regulations.[4]

The Swiss constitution contains no formal bill of rights. None

[1] Art. 3. Dodd, *Modern Constitutions*, I, 326.
[2] Art. 43. *Ibid.*, II, 269–270.
[3] Brooks, *Government and Politics of Switzerland*, 344.
[4] W. Martin, "Les étrangers en suisse," *Rev. Polit. et Parl.*, Nov. 10, 1915.

the less, the liberties of the individual are fully protected. Not fewer than twenty articles scattered throughout the document deal with the subject. First of all, there is the general provision that no canton shall expel from its territory one of its own citizens, or deprive him of his rights, whether acquired by birth or by settlement. In the second place, the cantons are required to treat Swiss citizens of other states precisely as they treat their own citizens in all matters of law and judicial procedure. Furthermore, many guarantees are expressly laid down, in terms equally binding upon the federal and state governments. Chief among these are: (1) equality before the law, (2) right to settle anywhere in Swiss territory, (3) right of petition, (4) liberty to form associations, provided they are not illegal or dangerous to the state, (5) freedom of the press, (6) inviolable secrecy of letters and telegrams, and (7) exemption from liability to imprisonment for debt. Finally, the prevalence of ecclesiastical dissensions and wars in times past, as well as the religious divergences of the present day, led the makers of the constitution to deal in an exceptionally explicit manner with rights and privileges pertaining to religion. Complete freedom of conscience and belief is guaranteed. No person may be compelled to become a member of a religious society, to receive religious instruction, to perform any religious act, or to incur penalty of any sort by reason of his religious opinions. No person may be required to pay taxes whose proceeds are specifically appropriated to the expenses of a religious body to which he does not belong.

CHAPTER XXXII

GOVERNMENT IN THE CANTONS

General Features. — In the main, the national government of Switzerland has been evolved from political principles, methods, and organs prevailing in the individual cantons. From this it follows that an understanding of the mechanism and workings of the federation is conditioned upon an acquaintance with the form and character of cantonal political organization.[1] Anything, however, in the nature of a detailed description which will apply to the governmental systems of all of the cantons is quite impossible. There are twenty-two cantons, of which three (Unterwalden, Basel, and Appenzell) are split into half-cantons; so that there are, in all, twenty-five distinct political units. Although included within a country which is less than half as large as Ireland, these political divisions are remarkably dissimilar — far more so than the decidedly larger states spread over a vastly broader area in the United States. In size they range from Graubünden, with 2773 square miles, to the half-canton of Urban Basel, with 14 square miles. The most populous at the census of 1910 was Bern, with 642,744 people, and the least populous was Lower Unterwalden, with 13,796. Some, as Glarus and the Grisons, are almost entirely rural; others, as Zürich and Thurgau, include both urban centers and extensive rural districts; still others, as Geneva and Urban Basel, are hardly more than city states. As has been pointed out, German was, in 1910, the preponderating language in fifteen cantons, French in five, and Italian in one; Protestants were in a majority in twelve cantons, Catholics in ten. To these differences must be added others of a political nature. Every canton has its own constitution; and the federal government is bound to guarantee these several instruments regardless of their contents, provided

[1] The principal works on the governments of the cantons are J. Schollenberger, *Grundriss der Staats und Verwaltungsrechts der schweizerischen Kantone*, 3 vols. (Zürich, 1808–1909), and J. Dubs, *Das öffentliche Recht der schweizerischen Eidgenossenschaft* (Zürich, 1877–78), I. Brief accounts will be found in Vincent, *Government in Switzerland*, Chaps. i–xii, and Brooks, *Government and Politics of Switzerland*, Chaps. xiv–xvii.

only that they do not contravene the federal constitution, that they establish a republican form of government, and that they have been ratified by the people and can be amended upon request of a majority. The cantonal constitutions are modified easily and frequently, and, on the whole, they tend to become more rather than less alike. They still show, however, a high degree of diversity.

It has been pointed out that by the terms of the federal constitution the cantons "exercise all the rights which are not delegated to the national government."[1] Notwithstanding the centralizing tendencies of the past two decades, this still means an extensive range of power. Under a certain amount of federal supervision, the cantons provide, maintain, and administer a common-school system. They regulate the relations of church and state. They control the conditions under which business and trade are carried on. They amplify and extend the federal legislation on child labor, workmen's compensation, and related subjects. They construct highways, subsidize and build railroads, and charter banks. They erect and maintain hospitals, insane asylums, sanitariums, and penitentaries. They control the liquor traffic and legislate on poor relief and public health. They advance the interests of agriculture by general legislation and by subsidizing special projects for rural betterment. They exercise broad powers of taxation. They maintain police systems, and administer justice through courts which they establish and judges whom they appoint. They control the naturalization of aliens, make "concordats" among themselves upon legislative, administrative, and judicial subjects, and frame agreements with neighboring states on border and police intercourse. Finally, they bear a large share in the administration of national, as distinguished from cantonal, law.[2] Much of their regulative power is now merely supplementary to the powers of the federal government. It is only fair to recognize, however, that in most branches of social and economic legislation the cantons blazed the way, and that the present power of the federal government has only later been acquired, with a view, usually, to greater uniformity of practice throughout the country.

The Landsgemeinde Cantons. — Even the most casual survey of the diverse governmental systems of the twenty-five cantons

[1] Art. 3. Dodd, *Modern Constitutions*, II, 257.

[2] See p. 571. For a more detailed account of cantonal functions see Brooks, *Government and Politics of Switzerland*, Chap. xv.

and half-cantons will reveal a logical basis of classification in the rôle which the people themselves play in the management of public affairs. First, there are two whole cantons and four half-cantons in which the electorate, assembled in a *Landsgemeinde*, or primary assembly, makes laws, levies taxes, appropriates money, and elects officers. Second, there are ten cantons and one half-canton in which, while the electorate is never brought together in an assembly, some or all measures enacted by the representative legislative body have to be submitted to a referendum before they can take effect. Third, there are six cantons and one half-canton in which measures are required to be so submitted only upon request of a given percentage of the voters. Finally, there is one canton — Freiburg — which, having no provision for the referendum in any form, has the only purely representative system of government in the country.

The origins of the *Landsgemeinde* are not entirely clear, but the institution seems to be an outgrowth of the *Hofgericht*, or manorial court, of feudal times.[1] It is known that rights of self-government were exercised through the agency of a *Landsgemeinde* in Uri shortly before the middle of the thirteenth century, and that a *Landsgemeinde* enacted important legislation in Schwyz in 1294, only three years after the formation of the Perpetual League. With the exception of the period of the Helvetic Republic, *Landsgemeinden* have existed continuously in Uri and Unterwalden since 1309, in Glarus since 1387, and in Appenzell since 1403. In the seventeenth century there were eleven *Landsgemeinden* in the country. In the early nineteenth century there were eight. In 1848, however, Schwyz and Zug gave up the system, and since that date it has been confined to six political divisions — the cantons of Uri and Glarus and the half-cantons of Upper Unterwalden, Lower Unterwalden, Appenzell Interior, and Appenzell Exterior. In these it remains, to all appearances, strongly entrenched. Those cantons that have

[1] It was once the fashion to represent the Landsgemeinde as a direct descendant of the primitive Germanic popular assembly. For the classic presentation of this view see E. A. Freeman, *Growth of the English Constitution* (4th ed., London, 1884), chap. i. That there was any such historical connection is, however, very doubtful. The principal treatise on the Landsgemeinde cantons is H. Ryffel, *Die schweizerische Landsgemeinden* (Zürich, 1904). The Landsgemeinden are admirably described in E. Osenbrügger, *Culturhistorisch Bilder aus der Schweiz* (Schaffhausen, 1867–76), and E. Rambert, "Les Landsgemeinden de la Suisse," in *Études historiques, et nationales* (Lausanne, 1880). For briefer accounts, in English, see Brooks, *Government and Parties of Switzerland*, Chap. xvii; Vincent, *Government in Switzerland*, Chap. iii; Lloyd, *A Sovereign People*, Chap. iv; Duploige, *Referendum in Switzerland*, 3–26; and Bonjour, *Real Democracy in Operation*, Chap. iii.

abandoned the *Landsgemeinde* did so mainly because their extent made it inconvenient for the voters to come together at any one place, and because their population became such that the gathering was apt to be too large for the intelligent transaction of business. The divisions that retain the system are small. The area of the two Appenzells is 162 square miles; of Glarus, 267; of the two Unterwaldens, 295; and of Uri, 415. The greatest dimension of any one of the districts is not above thirty-five miles, and the distance to be covered by the citizen in attending his *Landsgemeinde* rarely exceeds ten miles. The institution's survival is not, however, a mere matter of area or numbers; Uri is larger than nine, and Glarus and Upper Unterwalden are larger than five, of the commonwealths with representative institutions.[1]

Nominally, the *Landsgemeinde* is an assembly composed of all male citizens of the canton who have attained the voting age.[2] Actually, of course, it is a gathering of those who are able and disposed to be present. The constitutions of all of the six divisions make attendance a duty of every qualified person, and the Appenzells impose small fines for non-attendance unless a good excuse can be given. As would be expected, the actual attendance varies greatly. In Appenzell Interior it seems to average as high as seventy-seven per cent; in Uri, it runs as low as thirty-six per cent. The assembly has one regular session a year, commonly on the last Sunday in April or the first in May; but extraordinary sessions may be called. The meeting is set for a centrally located point — usually the principal town of the canton — and regularly takes place out of doors, perhaps in an open space in the town, perhaps in a near-by meadow where shade and water are available. With the men come, as a rule, the women and children; and the occasion takes on the character of a holiday of picturesque, even if solemn and ceremonious, observance.

One of the duties of the yearly meeting is to elect an executive council of five or more members, including a chairman or president known as the *Landamman*. There is also an advisory body, known as the *Landrat*, the *Kantonsrat*, or the *Grosser-rat*, and composed of the members of the executive council, together with certain persons popularly chosen to represent the communes or other local districts. When the *Landsgemeinde* meets,

[1] Brooks, *Government and Politics of Switzerland*, 382.

[2] Eighteen in Lower Unterwalden, twenty elsewhere. The number of persons qualified to participate ranged in 1900, from 2961 in Appenzell Interior to 12,694 in Appenzell Exterior. Ryffel, *Die schweizerischen Landsgemeinden*, 278.

the *Landamman* takes the chair; and its principal business is to hear and act upon proposals which the *Landrat* submits. These proposals may be initiated by the *Landrat* itself, or they may originate in petitions or requests laid before that body by private citizens or by groups of citizens. In all of the six commonwealths except Appenzell Exterior a single voter may thus initiate an ordinary law; there, 65 signatures are required. In two, *i.e.*, Glarus and Appenzell Interior, any qualified voter can also initiate a constitutional amendment; elsewhere, the number required varies from fifty to five hundred. All proposals must be made in writing, and it is the duty of the *Landrat* to pass upon them before the annual meeting and to be prepared to recommend their acceptance, amendment, or rejection. Only in Uri and Glarus may amendments and additional measures be offered "from the ring," *i.e.*, at the meeting of the *Landsgemeinde* itself. Measures submitted to the assembly are passed or rejected by a majority vote; and, unless a vote by ballot is demanded, a simple show of hands suffices. In Appenzell Exterior, the largest of the districts, there is no privilege of debate, save upon elections; but elsewhere free discussion prevails. The functions of the *Landsgemeinde* vary from canton to canton, but they are in all cases comprehensive. The assembly is the sovereign body of the canton; as such, it can do anything that lies within the competence of the canton itself. It makes and revises the constitution, enacts laws, levies taxes, makes appropriations, grants public privileges, creates offices, fixes salaries, and elects the executive and judicial officers who carry on the work of government in the canton throughout the year.

The *Landsgemeinde* canton is, thus, a pure democracy. The closest analogies to it are certain of the city states of ancient Greece in which the governing body (*e.g.*, the Athenian *ecclesia*) was a popular assembly, and the towns of our own New England, in which the fundamental powers of government were, and in some cases still are, exercised by the electorate gathered in "town meeting." There is undeniable attractiveness about this form of government, and it has made a strong sentimental appeal. Many have declared it the ideal political organization. None the less, it has inherent and serious limitations. The area covered must be very small, the population not numerous, interests reasonably harmonious, governmental functions relatively simple, the people of a high order of political capacity. There is, too, the theoretical objection that the actual conduct of governmental affairs is in the hands of a body endowed with

practically unlimited power, with a resulting danger of tyranny by the majority. In the cantons in which it survives the *Landsgemeinde* seems to work well, and there is no prospect of its abandonment.[1] The institution, however, prevails less than half as widely as two hundred years ago, and on the whole Swiss experience bears out the conclusion of most political scientists that pure democracy is workable only in local government, and that even there it tends ever more strongly to give way to the representative or mixed democratic-representative form.[2]

Cantonal Legislatures: the Grand Council. — All cantons except those of the *Landsgemeinde* type have a unicameral legislature, known as the *Grand Conseil*, the *Grossrat*, or the *Gran Consiglio*. Members of this body are elected by direct vote of the male citizens who have attained the age of twenty. In Zug there is one representative for every 350 inhabitants; in Schaffhausen, one for every 500. In Zürich and St. Gall, on the other hand, there is one for every 1500, and in Bern, one for every 3000. From this generous allotment it comes about that the councils are of considerable size. Few have under a hundred members; some have upwards of two hundred; Zürich has 223. The term varies from one to six years, but is usually three or four. Most of the councils meet twice a year; but in some cantons sessions are more frequent. Subject to the operation of the referendum and the initiative, these bodies perform the usual work of legislatures; where the compulsory referendum exists, their actions are in all cases provisional, but where the referendum does not exist, or is optional, their decisions are final and authoritative. "In deliberateness and sound judgment," says a leading student of Swiss institutions, "and in the quality of their discussions, the Grand Councils take high rank, several of them comparing favorably with the two national houses themselves. To a foreign observer the lengthy and systematic reports of the proceedings of cantonal legislatures in Swiss newspapers are particularly impressive as indicating the extent to which their deliberations are followed by the public. With bodies of this character the value of a second house for the purpose of avoiding hasty action is not likely to be great. Moreover, if restraining action of this sort should become necessary,

[1] Where, however — as at present in Appenzell Exterior — debate is no longer possible, the essential object of the meeting is lost, and it would seem that the people might as well be permitted to cast their votes in polling-booths nearer home.

[2] For further discussion of the merits of the democratic and representative systems see Willoughby, *Government of Modern States*, Chap. v.

the people themselves could provide it by means of the referendum." [1]

Throughout the nineteenth century the cantonal legislatures were storm-centers of controversy because of the notorious inequities arising from the election of members by simple plurality. Many times it happened that the party that polled the largest aggregate number of votes in a canton obtained only a small number of seats. Shortly after 1860 reformers began advocating as a remedy the adoption of some plan of proportional representation. No results, however, were attained for thirty years. Then, election disorders in Ticino in 1889–90 which made federal intervention necessary forced the issue; and in 1891, on suggestion of the Federal Council itself, this Italian-speaking canton revised its constitution and adopted the proportional principle. In the same year Neuchâtel took similar action, and thereafter the example was widely followed. Geneva adopted the plan in 1892, Zug in 1894, Solothurn in 1895, Urban Basel in 1905, Schwyz in 1906, Luzern in 1909, St. Gall in 1911, and Zürich in 1917. Nine cantons and one half-canton, therefore, at present elect the members of their legislature under the proportional system; besides, four of these, and two more that do not employ it in legislative elections, have made the system either mandatory or optional in communal elections, and the plan has been adopted by Bern and one or two other leading municipalities. It is computed that the proportional system, in one form or another, reached rather more than half of the people of the entire country even before it won its greatest triumph in 1918, in being adopted for use in the election of members of the National Council, *i.e.*, the lower branch of the national legislature.[2] The form commonly employed is a modification of the "list system" devised by Victor d'Hondt of the University of Ghent, and used to-day in Belgium and in France.[3] Each election district chooses several representatives; and the elector is entitled to cast as many votes as there are seats to be filled, with the option (which the Belgian and French voter does not have) of concentrating his votes upon a single candidate. The whole number of votes cast in the district is divided by the number of seats to be filled plus one. This supplies the "electoral quotient"; and each party list is awarded seats equal to the number of times that this quotient (strictly, the whole number nearest it if it be not itself a whole number) is contained in

[1] Brooks, *Government and Politics of Switzerland*, 314–315.
[2] See p. 588.
[3] See pp. 425–427.

the total number of votes cast for the candidates on the list. Experience with this system has been very satisfactory, and election disorders have practically ceased. All elements have the assurance that, after they have attained a reasonable amount of importance, such strength as they can build up among the electorate will be duly reflected in the make-up of the legislature.[1]

The Referendum and the Initiative. — The most interesting and characteristic political devices of Switzerland — the features of the governmental system that have attracted most attention from outside observers — are the referendum and the initiative; and it is within the bounds of truth to say that wherever, as in many of our American states, these instrumentalities of popular government have been discussed or adopted, the Swiss example has been an important, if not the weightiest, factor in the decisions reached. The beginnings of the referendum in Switzerland are at least as remote as the sixteenth century. The principle was applied first of all in the complicated governments of two territories — the Grisons and the Valais — which have since become cantons, but which at the time mentioned were only districts affiliated with the Confederation. In the later sixteenth century there were traces of the principle in Bern and in Zürich. In truth, the political arrangements of the early Confederation itself were based upon a procedure which at all events closely resembled the referendum. Delegates sent by the cantons to the Diet were commissioned only *ad audiendum et referendum;* that is, they were authorized, not to agree finally to proposals, but simply to hear them and to refer them to the cantonal governments for ultimate decision.

In its present form, however, the Swiss referendum originated in the canton of St. Gall in 1830. It is a nineteenth century creation, and may justly be considered a product of the political philosophy of Rousseau and other liberals, who taught that laws ought to be made, not by representatives, but by the people directly.[2] The essential features of it are: (1) a legislature, which enacts measures in a tentative form, (2) an arrangement

[1] For an account of the introduction of proportional representation in the canton of Ticino see J. Galland, *La démocratie tessinoise et la représentation proportionnelle* (Grenoble, 1909), and L. Aureglia, *Évolution du droit public du canton Tessin dans le sens démocratique* (Paris, 1916). For brief general discussion see Brooks, *Government and Politics of Switzerland*, Chap. xvi, and Vincent, *Government in Switzerland*, Chap. iv. The principal treatise is E. Klöti, *Die Proportionwahl in der Schweiz: Geschichte, Darstellung, und Kritik* (Bern, 1901).

[2] Lowell, *Governments and Parties*, II, 243.

by which such measures shall, or may, be submitted to the electorate, and (3) a vote by the electorate confirming or rejecting the legislature's proposal. Obviously, the referendum as thus defined is the equivalent of an absolute veto in the hands of the executive, with only the important difference that the power is wielded, not by a president, governor, or *Landamman*, but by the people themselves. It is doubtless on account of the widespread use of the referendum that the veto power as wielded by an executive officer or board does not exist in Switzerland.

The principle can, of course, be utilized in connection with public actions of every conceivable character. In Switzerland it is brought to bear upon two main kinds of enactments: (1) constitutions and constitutional amendments, and (2) ordinary laws. As applied to constitutional instruments, the referendum is in use to-day in every one of the non-*Landsgemeinde* cantons. In the latter it would be superfluous, for there the people act directly and in the first instance upon all measures. The referendum upon constitutional proposals is no longer peculiarly Swiss. It has long been employed in the United States. It is in use in Australia. There have been important instances of its use in France and other non-English-speaking countries. As applied to ordinary laws, the referendum, however, is distinctly Swiss, not only in origin and in spirit, but in the sense that it is nowhere in regular use outside of that country save in certain of the American states. Instituted in part to offset the evils of a defective system of representation and in part as a means of compromise between pure democracy and pure representative government, the referendum for ordinary laws exists in every non-*Landsgemeinde* canton to-day except Freiburg. In eleven cantons it is "compulsory"; that is, every law passed by the cantonal legislature must, before taking effect, be submitted to a popular vote. In seven cantons the referendum is "facultative," or optional; that is, a law must be referred only if demand is made by a specified number of voters. In Urban Basel the number necessary to make a referendum petition effective is one thousand, or about four per cent of the total electorate. In St. Gall it is four thousand, or seven per cent. Elsewhere the proportion runs to twelve or fifteen per cent. The proportion of voters sufficient to reject a measure also varies. In some cases a majority of all enfranchised citizens is required, in others only a majority of those actually voting. A petition asking for a referendum must, in order to have effect, be presented to the executive council of the canton within a specified period usu-

ally thirty days — after the passage of the measure upon which it is proposed that a vote be taken.

In practice, the referendum imposes a considerable task upon the electorate, especially in the eleven cantons in which all laws, as well as constitutional amendments, have to be submitted. The yearly output of a cantonal legislature is, however, far less voluminous than that of an American state legislature. "In nearly all cases it barely fills a small pamphlet of a few score pages." In Zürich, where the compulsory system prevails, and where the number of measures submitted reaches its maximum, only eighty-one acts were submitted in the fifteen years from 1893 to 1908. Of these, sixty-five were approved and sixteen were rejected. It is to be observed that resolutions and other more or less incidental actions are usually not required to be submitted. The popular vote is no mere matter of form. In several cantons the proportion of measures rejected exceeds fifty per cent, and in a few cases it reaches sixty or sixty-five per cent. Furthermore, the trend is toward increasing rather than diminishing, the use of the system; within quite recent years two cantons have gone over from the optional to the compulsory form.

The complement of the referendum is the initiative. Through the exercise of the one the people may prevent the taking effect of a law or a constitutional amendment to which they object. Through the exercise of the other they may not merely bring desired measures to the attention of the legislature; they may secure the enactment of such measures despite the indifference or opposition of the legislative body. In current political discussion, and in their actual operation, the two devices are likely to be closely associated. They are, however, quite distinct, as is illustrated by the fact that the earliest adoptions of the initiative in Switzerland occurred in cantons (Vaud in 1845 and Aargau in 1852) in which as yet the referendum did not exist. The right of popular initiative now barely falls short of being universal. Constitutional amendments may be thus brought forward in every canton, ordinary laws in every one except Freiburg. In most cases the number of signers necessary for an initiative petition is the same as is required for a referendum petition; and any measure proposed by the requisite number of voters must be taken under consideration by the legislature within a specified period. If the legislature desires to prepare a counter-project to be submitted to the voters along with the popularly initiated proposition, it may do so. But the original

proposal must, in any case, go before the people, accompanied by the legislature's opinion upon it; and their verdict is decisive.

The use made of the initiative in the cantons has been decidedly conservative. "The most notable fact about Swiss experience with the initiative," says a leading authority, writing in 1913, "is the small amount of legislation it has produced. Even the attempts to use it have not been very frequent. The total output of federal legislation from that source in a score of years has been two measures, or one in ten years. In the cantons the result has been smaller still. In . . . [eighteen or twenty] years only fifteen measures have been enacted in this way by all the eighteen cantons that possess the procedure, or an average of less than one measure per canton in twenty years; while in Bern, the most prolific of them all, the average is only one measure in five years. The Swiss people certainly do not appear to crave any considerable amount of legislation which their representatives are unwilling to enact. This is the more striking because in strong contrast with the experience of the American states, where the initiative has been used more freely than the referendum."[1] The proportion of popularly initiated measures which fail of adoption is, however, large. Thus in nineteen years Aargau adopted three such measures and rejected three; in a similar period Thurgau and St. Gall adopted one and rejected two; in fifteen years Zürich adopted one and rejected eleven.

Administrative and Judicial Machinery. — Executive authority in each canton is vested in a board or commission, usually of five or seven members, and variously designated as the Administrative Council (*Regierungsrat*), the Small Council (*Kleinrat*), or the Council of State (*Conseil d'État*). The term of members varies from one to five years. Formerly the councilors were elected by the legislature, but that method persists only in Freiburg and Valais; elsewhere they are chosen by the

[1] Lowell, *Public Opinion and Popular Government* (New York, 1913), 202–203. For a brief description of the cantonal referendum and initiative see Vincent, *Government in Switzerland*, Chap. vi. Excellent tables showing the actual use of the two devices from 1803 to 1910 are printed in Lowell's volume, pp. 311–367, and the subject is differently presented in T. Curti, *Resultate des schweizerischen Referendums* (2d ed., Bern, 1911). The best treatises on the referendum, cantonal and federal, are S. Duploige, *Le referendum en Suisse* (Brussels, 1892), of which there is an English translation, by C. P. Trevelyan, under the title *The Referendum in Switzerland* (London, 1898), and T. Curti, *Le referendum; histoire de la législation populaire en Suisse* (Paris, 1905). Two valuable treatises on the initiative are E. Klaus, *Frage der Volksinitiativ* (Zürich, 1906), and A. Keller, *Das Volksinitiativrecht nach den schweizerischen Kantonsverfassungen* (Zürich, 1889).

people. To be singled out among them is the *Landamman*, or president, who is the official head of the government and the representative of the canton on ceremonial occasions, although otherwise hardly to be distinguished from his colleagues. The council as a whole sees to the execution of the laws, maintains public order, drafts bills at the request of the legislative branch, supervises the communal governments, and, in general, safeguards the interests of the canton. For purposes of administrative work, the individual members are assigned to departments, such as finance, education, justice, police, sanitation, trade, industry, agriculture, and charity. Although nowadays the executive council is chosen in all cases except two by the people, rather than by the legislature, the relations which it sustains with the latter are substantially the same as those sustained by the Federal Council with the Federal Assembly; that is, the executive body is, for all practical purposes, a committee charged with carrying out the laws made by the legislative branch and executing whatever orders it may give. Councilors may attend sittings of the legislature and speak, but not vote.

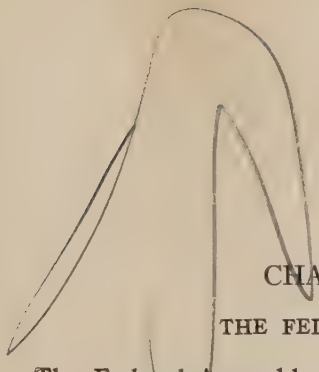
For purposes of local administration all cantons except the smallest ones are divided into districts (*Bezirke* or *Amtsbezirke*), in each of which is a *Bezirksamman*, or prefect. This official, whether chosen by the executive council, by the legislature, or even by the people, is in every sense a representative of the cantonal government. Sometimes he is assisted by a *Bezirksrat*, or district council; frequently he is not. In Schwyz there is a *Bezirksgemeinde*, or popular assembly, in each of the six districts, but this is wholly exceptional.

The smallest governmental unit is the commune (*municipalité* or *Einwohnergemeinde*), first established in its present form under the Helvetic Republic in 1798–1802. Legally, each commune consists of all male Swiss citizens of age who have been resident within the communal boundaries for a specified period, usually three months. Some are cities of considerable size, as Zürich with over 200,000 people. Others are rural areas with populations of a few hundred, or even as low as fifty or seventy-five. In all, there are 3,164. The principal organ of government is usually a town meeting, which enacts ordinances, fixes tax rates, makes appropriations, and elects the communal officers; although where the population is large, especially in the cities, a legislative council (*Stadtrat*) is usually elected by the people for the discharge of most of these functions. Adminis-

tration is vested in an executive council (*Gemeinderat*), of five or more members, elected either by the legislative council or by the people, and presided over by a president or mayor (*Gemeindepräsident*). In smaller communes this executive council works collectively, but in larger ones the members are individually assigned to the several branches of administration. Subordinate communal officials — usually at least a treasurer, a clerk, and a justice of the peace — are chosen either by the executive council or by the popular assembly. With rarely an exception, communal government is of a high order of efficiency.

Each canton has its own judicial system. Judges are elected either by the people or by the legislature. The hierarchy of civil tribunals is composed of (1) the justice of the peace in each commune — frequently called the *Vermittler*, or "mediator," because it is his duty to try to settle by mediation every case brought before him; (2) the *Bezirksgericht*, or district court, consisting of five to seven popularly chosen judges, and (3) the *Kantonsgericht*, or cantonal court, consisting of seven to thirteen judges, usually elected by the legislature. Cases may be appealed from the district court to a special division of the cantonal court organized as a court of cassation. All of these tribunals must apply the law as they find it; they have no power to declare legislation unconstitutional. There is a separate hierarchy of courts for the trial of criminal cases; and here also a special chamber of the *Kantonsgericht* serves as a court of last resort. Questions of fact in criminal cases are decided by juries, which usually consist of six or nine members, popularly elected. In but few instances can an appeal be carried from a cantonal to a federal tribunal.[1]

[1] Vincent, *Government in Switzerland*, Chap. x; Lloyd, *A Sovereign People*, Chap. iii.



CHAPTER XXXIII

THE FEDERAL GOVERNMENT

The Federal Assembly: the National Council. — When they came to make provision for the national legislature the framers of the Swiss constitution of 1848 faced the same problems that caused the authors of our own national organic law in 1787 many troubled hours. Should the legislative body be unicameral or bicameral? How should the members be chosen? If two houses were established, should they have the same powers and functions? What should be their relation to the national executive? All Swiss experience pointed to the organization of the legislature in a single chamber. Save during the brief period 1798–1803, the only common organ that the Confederation had ever known was a unicameral diet; and the cantonal legislatures were without exception of the same form. On the other hand, bicameral legislatures were by far the more common throughout the civilized world; the English Parliament, the French Parliament as organized from 1814 to 1848, the American Congress, and the legislatures of the American states, were impressive examples. Now that large power was to be conferred upon the central government, the argument that there ought to be an upper house to act as a check upon the lower one had much weight. Finally, and perhaps mainly, the creation of two houses would make it possible to organize one of them with a definite view to recognizing and preserving the identity of the several cantons and preventing the influence of the smaller ones from being overwhelmed by that of the larger ones.

As at Philadelphia in 1787, considerations of this sort carried the day. Hence the provision with which the chapter of the Swiss constitution devoted to the federal authorities opens: "With the reservation of the rights of the people and of the cantons, the supreme authority of the Confederation shall be exercised by the Federal Assembly, which shall consist of two sections or councils, namely, (1) the National Council, and (2) the Council of States."[1] Herein, indeed, are laid down two fundamental features of the

[1] Art. 71. Dodd, *Modern Constitutions*, II, 276.

Swiss political system. One is the bicameral organization of the national legislature. The other is the concentration of supreme authority in this legislature. Like Great Britain and France, Switzerland has not proceeded on the principle of separation of powers. Her government is not organized, as is that of the United States, in coördinate branches. The executive and the judiciary are duly provided for, but they are subordinate.

The National Council is essentially a House of Commons; the Council of the States, a Senate. The National Council is composed of representatives popularly chosen, for a term of three years, by direct vote and by secret ballot. The constitution provides that each canton shall have one representative for every 20,000 inhabitants, or major fraction thereof, with the further stipulation that every canton and half-canton shall have at least one representative. As in the United States, a census is taken every ten years, whereupon a reapportionment of seats is made; and, contrary to American practice, the federal legislature not merely allots to each state its quota of representatives, but lays out the election districts. The original number of members was 120; it is now, on the basis of the census of 1910, 189. Bern has thirty-two seats, Zürich twenty-five, Vaud sixteen, and thus downwards to Uri and Zug with a single member each. Districts have usually been so arranged as to return two, three, four, or more members, elected on a general ticket; so that when, in 1918, after repeated efforts, the principle of proportional representation was introduced, no great amount of geographical readjustment was necessary. The electorate consists of all male citizens who have attained the age of twenty, except such as may have been disfranchised by the cantons in which they reside.[1] All terms expire at the same time, and elections are held on the same day (the last Sunday in October) throughout the entire country. On the first ballot an absolute majority is necessary to a choice. If seats remain unfilled as a result of this rule, a second ballot is taken two or three weeks later, and on this occasion a simple plurality is sufficient to elect. Feeling against the Catholic clergy in the era of the *Sonderbund* found expression in a clause of the constitution confining membership in the National Council to laymen. Protestant clergymen can, and sometimes do, become members after having temporarily or permanently divested them-

[1] The woman's suffrage movement has made little headway in Switzerland, and it has won no successes except in connection with the election of non-political officers in two or three cantons. At the annual meeting of the National Woman's Suffrage Association in 1917 a resolution was adopted favoring the use of the initiative to get before the voters an amendment conferring the federal franchise upon women.

selves of their clerical status. Catholic clergy can qualify themselves in this way less easily, practically not at all; hence they are still debarred. Otherwise, every voter is eligible. Members receive from the federal treasury the modest compensation of twenty francs for each day they are actually in attendance, with deductions for tardiness without excuse; they also receive a small mileage allowance.

At each regular or extraordinary session the National Council chooses from among its members a president, a vice-president, and four tellers, under the provision that a member who during a regular session has held the office of president is ineligible either as president or vice-president at the ensuing regular session, and that the same member may not be vice-president during two consecutive regular sessions. This arrangement was devised on the supposition that there would be only one regular session a year. The volume of business has long required two such sessions. However, by a legislative fiction the two are considered as one, and the officers continue at their posts throughout the year. In the election of vice-presidents, tellers, and other officers the president participates as any other member; on bills and resolutions he usually votes only in the case of a tie. The president, vice-president, and tellers together form the "bureau" of the Council, which selects most of the committees, counts votes, and transacts routine business.

The Federal Assembly: the Council of States. — Whatever arguments there may be for a bicameral legislature in a unitary state like France or Italy, there is always the additional consideration in a federal state that a perfectly natural basis exists for making up an upper chamber which will not be a mere replica of the lower one; it can be made to represent the states as such, or at all events the people grouped in constituencies very different from those represented by the members of the lower branch. Of such character is the American Senate, and likewise the Swiss Council of States. At first glance, the Swiss upper chamber seems almost exactly like the American; and it is a matter of record that the authors of the Swiss constitution decided upon a second chamber mainly because they wanted in the new system an agency that would serve the purposes that were understood to be served by the American upper house. In point of fact, however, the Swiss Council is very unlike its American prototype. It consists of forty-four members, two chosen in each canton; and to this extent it indeed resembles the Senate. The manner of election and the qualifications of members, however, as well as tenure of

office and the amount of remuneration, are not regulated, as they are in the United States, by the constitution, or by federal authority, but are left to be determined quite independently by the several cantons. Consequently, although certain usages are becoming somewhat prevalent, there is no uniformity in these matters. In most cantons the councilors are chosen by popular vote, as United States senators are now chosen; but in seven they are elected by the legislature. Five cantons and half-cantons elect for one year, one elects for two years, one for four years, the remainder elect for three. By the terms of the federal constitution the salaries of members must be paid by the cantons; and while salaries and mileage are usually paid at the same rates as are provided by federal law for the members of the National Council, there is still a certain amount of variation. The Council of States is, therefore, more purely federal than the American Senate, because its composition and character are determined to a greater degree by the several states.

In the second place, the functions of the upper chamber are practically identical with those of the lower. On account of its connection with treaty-making and appointments (not to speak of its duties in impeachment cases), the American Senate has power and character of its own, unshared by the House of Representatives. The Swiss Council has nothing of the kind. Even its organization is the same as that of the lower chamber. In the earlier days of the present constitutional system the Council indeed enjoyed high prestige and influence; but in time it fell into decline. Able and ambitious statesmen have usually preferred to be identified with the lower house. The chamber has large powers — powers nominally coördinate with those of the lower one - and it occasionally defeats measures sent up to it by the National Council. But, without being quite the feeble upper chamber that is apt to be associated with a cabinet system of government,[1] it is yet essentially lacking in the initiative and independence of a true senate.

Powers and Procedure of the Federal Assembly. — "The National Council and the Council of States," says the federal constitution, "shall consider all the subjects which the present constitution places within the competence of the Confederation and which are not assigned to any other federal authority."[2] The range of this competence is very broad. It includes not only a vast volume of legislative power, but important functions of a

[1] The French Senate is the principal exception to this rule. See p. 411.
[2] Art. 84. Dodd, *Modern Constitutions*, II, 278.

constituent, an electoral, an executive, and a judicial nature. The part taken by the Assembly in constitution-making will be described presently in connection with the operation of the federal referendum.[1] The electoral function consists in the choice of the Federal Council (the chief executive authority), the Federal Court, the chancellor,[2] the commander-in-chief of the army, and such other officers as may be specified by law. On the executive, or quasi-executive side, the Assembly (1) declares war and makes peace, (2) guarantees the constitutions and territory of the cantons, (3) grants amnesties and pardons, (4) takes measures for the internal safety of the country and for the maintenance of peace and order, (5) approves all alliances and treaties with foreign powers — also all agreements made by the cantons among themselves or with foreign powers, in case the Federal Council or any canton protests, (6) controls the federal army, and (7) supervises the federal administration and the federal courts. These functions, it is true, are in part actually performed by the Federal Council; but, as will be emphasized below, this executive agency is, in all these matters and many others, under absolute control of the legislature.

On the judicial side, the Assembly formerly acted as a court of last resort to consider (1) protests against the decisions of the Federal Council upon administrative conflicts and (2) conflicts of jurisdiction between federal authorities. However, a federal administrative court authorized by an amendment of 1914 has taken over the larger part of this somewhat onerous task. The grant of legislative power is both general and specific. On the one hand, the Assembly is endowed with full authority to make "laws and ordinances upon subjects which by the constitution are placed within the federal competence"; on the other hand, original clauses and later amendments bestow particular powers, such as to adopt budgets, create offices, fix salaries, regulate the civil and criminal law, and enact uniform regulations concerning the arts and trades.

The constitution requires that the two councils shall meet at least once a year. In point of fact, two regular sessions (technically regarded as one) are always held, one beginning in November and the other in June; and an extraordinary meeting in March has almost become a custom. An extraordinary session may be

[1] See p. 593.

[2] His principal duty is to keep the minutes of the National Council. A vice-chancellor, appointed by the Federal Council, performs a similar function in the Council of States.

called by the Federal Council on its own motion; one must be called upon request of either one fourth of the members of the National Council or five cantons. Normally, business is transacted, as in other legislatures, by the two houses sitting separately. But for certain purposes the two sit as one body, decisions being reached by a simple majority of the members present and voting. These purposes are three: (1) election of the officials mentioned above, (2) exercise of the power of pardon, and (3) decision of conflicts of jurisdiction between different federal authorities. The French method of electing the chief executive in a joint session of the legislative chambers thus finds a parallel in Switzerland. Procedure of the councils is regulated to a slight degree by the constitution, but mainly by parliamentary acts and rules. Sittings are commonly public; but ten members of the lower house and five of the upper may move to close the doors. Three official languages — German, French, and Italian — are used; laws and documents are printed in all.

According to the constitution, bills and resolutions may be introduced in either house, and by any member. Two or three things are important to observe, however, in this connection. One of them is the peculiarly Swiss principle that every bill introduced is introduced in the National Assembly, *i.e.*, in both houses, and not in one house or the other separately. Any bill introduced is therefore before both houses, and either body may proceed at any time to consider it. Speaking strictly, therefore, the usual rule that money bills shall originate in the lower house does not apply. In point of fact, however, such bills, after being presented by the Federal Council, are regularly taken up first in the larger chamber. This suggests a second important fact, namely, that, while all members have an unrestricted right to introduce measures, most persons who wish to avail themselves of this right present their proposals to the Federal Council, to be considered and put into shape by it, and hence do not introduce them directly and in person. This practice has the very great advantage of enabling most bills to be drafted by expert authority and to be made coherent and exact before they engage the time of the legislative bodies. The Federal Council may, of course, introduce measures on its own initiative. Its members do not have votes in the Assembly, but they appear before the chambers to explain and defend the bills which they have sponsored. There are committees, whose members are chosen by the Council directly or by the bureau of officers; but bills are referred to them only by a special vote. Debate in the two councils

proceeds with notable freedom. The membership is not large; the level of intelligence and integrity is high; party spirit does not, as a rule, run strong; the presiding officers are traditionally fair to all elements; turbulence is almost unknown; rules are few and simple; the closure is employed, but only on demand of two thirds of the membership, and not so long as a member who has not taken part in the debate wishes to introduce and explain an amendment.[1]

The Referendum. — From cantonal legislative procedure was long ago carried over into the domain of federal law-making the now familiar device of the referendum. As in the cantons, the federal referendum is employed in two forms, *i.e.*, compulsory and optional. The one was introduced in the constitution of 1848, and applies solely to constitutional amendments. The other first appeared in the revised constitution of 1874, and applies to ordinary laws. The somewhat curious attempt is made in the constitution to distinguish between "total" and "partial" constitutional revisions; and three different modes for the one and two for the other are laid down. In the event that the legislative councils agree upon a total revision, they frame and adopt the new constitution precisely as if it were an ordinary statute, whereupon it is submitted to the people for ratification. If, however, the houses disagree, or if as many as 50,000 voters demand a total revision, the question whether there shall be a revision must be submitted to the people; if in either case the majority opinion is affirmative, new legislative councils must be elected for the purpose of undertaking the work.[2] Partial revision may be initiated by the councils and carried through as is a statute, subject to popular ratification. Or it may be proposed in a citizens' petition bearing fifty thousand signatures. If the popular proposal comes in definite form, the councils consider it and, if they agree to it, submit it for ratification. If it is general rather than specific, they themselves reduce it to form sufficiently definite for action. If they disapprove a proposal, they must submit it to the people, but they may accompany it with an alternative, or with a recommendation of rejection. In any case, an amendment becomes effective only when adopted by a majority of citizens voting thereon and by a majority of the cantons.

Between 1874 and 1917 twenty-one amendments were voted by the federal legislature, and all but five were ratified by the

[1] For fuller accounts of procedure in the councils see Brooks, *Government and Politics of Switzerland*, 91–101, and Vincent, *Government in Switzerland*, 181–187.

[2] Art. 120. Dodd, *Modern Constitutions*, II. 287.

requisite popular and cantonal majorities; of the six voted during the last twelve years of this period, all were adopted. Some of the sixteen successful amendments related to the framework of government, *e.g.*, the measure of 1891 instituting the popular initiative of constitutional amendments and the measure of 1914 establishing a federal administrative court. Others were directed at legal reform, *e.g.*, the two amendments of 1898 providing for uniform civil and criminal codes. But the majority had in view the extension of the power of the federal government in social and economic legislation, *e.g.*, the amendment of 1885 permitting creation of the alcohol monopoly, that of 1897 authorizing pure food legislation, and that of 1908 conferring authority for uniform industrial legislation.[1]

Since 1874 the referendum has been applied also to ordinary legislation, but only in the optional form. Laws and resolutions passed by the Federal Assembly, unless declared to be of a private rather than a public nature, or to be urgent, are suspended for a period of ninety days, to afford opportunity for requests for a referendum to be duly circulated. If during this interval petitions signed by as many as 30,000 voters, or adopted by the legislatures of as many as eight cantons, are filed with the Federal Council, that authority must arrange for submission of the measure in question to a popular vote within four weeks after the demand is officially announced. The mode of carrying out the referendum is carefully prescribed by federal legislation. If a majority of the votes cast, without regard to the number or proportion of cantons, is favorable, the Federal Council proclaims the fact, and the measure takes effect without further delay. An adverse majority, on the other hand, renders the measure null. In the event that no referendum is demanded, the measure, of course, goes into effect automatically at the expiration of the ninety-day period.

As in the cantons, the referendum upon ordinary laws has been used sparingly. Not once have eight cantonal governments taken the necessary steps to cause a law to be referred. More significant than this is the fact that of two hundred sixty-one measures subject to referendum passed between 1874 and the close of 1908, only thirty — or barely 11.5 per cent — were brought to a popular vote. Furthermore, of these thirty, only nineteen were re-

[1] See complete list, with votes, in Brooks, *Government and Politics of Switzerland*, 138–139. The earlier history of Swiss constitutional revision is surveyed in Borgeaud, *Adoption and Amendment of Constitutions*, 291–332, and Duploige, *Referendum in Switzerland*, 211–265.

jected. "The effect of the federal optional legislative referendum was, then, to hold up a little more than seven per cent of the statutory output of the Federal Assembly."[1] Since 1900 there has been a popular vote on only six measures, — two relating to accident and sickness insurance, one to tariffs, one to pure food regulations, one to army reorganization, and one to certain additions to the penal code.

The Initiative. — The constitution of 1848 provided that projects for total revision of the fundamental law might be initiated by fifty thousand voters. This proved of little practical use; what was needed, it was soon discovered, was rather a right of popular initiative of single, specific amendments. After prolonged discussion, an amendment conferring this right was adopted in 1891.[2] The working of the system has been explained in the preceding section. Any fifty thousand voters can at any time compel the federal government to take action upon proposed changes in the constitution and to submit a project, with or without its approval, for final action by the people. "All that an unwilling legislature can do is to submit a counter proposal or advise the people to vote down the initiative project." When the system was established it was felt in some quarters that the door had been thrown open for frequent, ill-considered, and revolutionary changes, which would impair the stability, and even the permanence, of the republic. Such apprehension, however, has proved groundless. In upwards of thirty years only ten popularly initiated amendments have been voted on, and only four have been adopted.[3]

The earliest use made of the new device was, indeed, unjustifiable; in 1893 an amendment was adopted, by a vote of 191,517 to 127,101, prohibiting the Jewish method of slaughtering animals. This action was mainly a result of antisemitic prejudice. However, it is to be observed that no legislation for enforcement has been enacted, and that in most cantons the amendment is a dead letter. The second and third proposals, brought forward in 1894, were entirely creditable, although somewhat radical. One was a socialistic scheme obligating the state to provide employment for every able-bodied man; the other was a project to pay over to the cantons a bonus of two francs per capita from the rapidly increasing returns of the customs duties. But both were defeated

[1] Rappard, in *Amer. Polit. Sci. Rev.*, Aug., 1912, 357. For a complete list, with votes, see Brooks, *op. cit.*, 154–155.

[2] Borgeaud, *Adoption and Amendment of Constitutions*, 306–316.

[3] Strictly, only eight *different* amendments have been voted on; for the proposal for proportional representation was before the people three times.

by substantial majorities.[1] The next three proposals related to changes in the governmental system: (1) election of the National Council on the plan of proportional representation, defeated in 1900 by a vote of 241,666 to 169,008; (2) increase of the Federal Council to nine, and substitution of election by popular vote for election by the Federal Assembly, defeated also in 1900 by 270,522 to 145,926; and (3) exclusion of the non-citizen population in apportioning members of the National Council, defeated in 1903 by 295,085 to 95,121. In 1908 two popularly initiated amendments were adopted — the first in fifteen years. One, prohibiting the manufacture and sale of absinthe, was carried by a vote of 241,078 to 138,669; the other, authorizing federal regulation of water-power, prevailed by a vote of 304,923 to 56,237. In 1910 the proportional representation project was revived, but was lost by 265,194 to 240,305. Revived again in 1918, it at last triumphed, by a vote of 299,550 to 149,035, winning the support of all of the cantons except three.[2] It is natural that the proportion of popularly initiated amendments to be adopted should be small. In the case of a simple referendum, the presumption is, as one writer has put it, that the proposed change must have wide popular support, as otherwise the two houses would hardly take it up. An initiative proposal, on the other hand, is undertaken precisely because the legislature stands out against it, presumably because the representatives feel that it does not command a popular majority.[3]

Dubious as was its earlier history, the federal initiative must be recognized as having fully justified itself. Proposals since 1900 have been, without exception, constructive and reasonable; those that have been adopted have proved of substantial benefit. Among reforms that have been much discussed in recent years has been the extension of the scope of the popular initiative, and also of the compulsory referendum, so as to apply to all federal legislation. Both apply as yet only to constitutional amendments. In 1906 the Federal Council went so far as to submit to the legislative councils a proposal intended to meet the first of these ends. The purport of the plan was that fifty thousand voters or eight cantons should have the power to propose and bring to a nation-wide vote any sort of federal law or resolution.

[1] C. Borgeaud, "Le plébiscite du 4 novembre 1894," in *Rev. du Droit Public*, Nov.–Dec., 1894. The adverse votes were 308,289 to 75,880 and 350,639 to 145,462 respectively.

[2] M. Deslanders, "Le triomphe de la R. P. en Suisse," in *Rev. Polit. et Parl.*, Apr., 1919.

[3] Brooks, *Government and Politics of Switzerland*, 146.

The project was discussed in the lower branch of the Assembly, but without result. An obvious objection to a compulsory form of federal referendum would be the increased burden that would be thrown upon the voters. The present burden is, however, not so great as might be imagined, and perhaps it could be increased with no undesirable effect. The largest number of federal initiative and referendum measures voted on in any one year since 1874 is five (in 1891); in the populous canton of Zürich the average number of measures, both federal and cantonal, voted on by the people between 1874 and 1894 was under two and one-half for each time that they were called to the polls. The cost of the system, too, is very small. Copies of the measures to be voted on are printed and distributed by the federal government; incidental expenses are borne by the cantons and communes.[1]

The Executive: Federal Council and President. — When they had made the important decision that there should be a separate and strong executive, the framers of the Swiss, as of the American, constitution were confronted with the question whether the executive power should be vested in one person or in a board or commission. In the United States the disadvantages assumed to be inherent in an executive consisting of a number of persons who were neither individually responsible nor likely to be altogether harmonious determined a decision in favor of a single president. In Switzerland, on the other hand, the cantonal tradition of a collegial executive, combined with an exaggerated fear of the concentration of power, determined resort to the other alternative. There is a president of the Swiss Confederation. But, as will appear, his status is altogether different from that of the president of the United States, and likewise from that of the president of France. The Swiss executive consists rather of a *Bundesrath*,[2] or Federal Council, in which the president is little more than chairman.

"The supreme directive and executive authority of the Confederation," says the constitution, "shall be exercised by a Federal Council, composed of seven members." The members of this body are elected by the Federal Assembly, *i.e.*, the National

[1] For references on the initiative and the referendum see p. 584. Other authoritative discussions are W. E. Rappard, "The Initiative and Referendum in Switzerland," in *Amer. Polit. Sci. Rev.*, Aug., 1912, and "The Initiative, Referendum, and Recall in Switzerland," in *Ann. Amer. Acad. Polit. and Soc. Sci.*, Sept., 1912; Bonjour, *Real Democracy in Operation*. Chaps. iv-vii.

[2] The name is German, but the institution bears no resemblance whatsoever to the Bundesrat of the former Hohenzollern empire.

Council and the Council of the States in joint session, from among all citizens eligible to the National Council, or popular legislative body, with the condition simply that not more than one member may be chosen from the same canton. By custom, but not by constitutional requirement, they are selected from among the members of the two houses; though upon election they must give up their seats. Nominally, the term is three years; practically, it is variable, for whenever the National Council is dissolved prior to the expiration of its triennial period the new Assembly proceeds to choose a new Federal Council. Two officials, designated respectively as president of the Confederation and vice-president of the Federal Council, are elected annually by the Assembly from among the seven members of the Council. A retiring president may not be elected president or vice-president for the succeeding year; nor may any member occupy the vice-presidency during two consecutive years. By custom the vice-president regularly succeeds to the presidency. The functions of the president, as such, hardly extend beyond presiding over the deliberations of the Council, exercising a general supervision over the conduct of administration, and representing the republic, at home and abroad, on ceremonial occasions. He has no more actual power than any of his six colleagues. Like them, he takes charge of an executive department — frequently, although not necessarily, the "political" department, including the direction of foreign affairs — and gives most of his time to its management. He receives only twenty thousand francs a year, which is but two thousand more than is paid his associates.

The work of administration is divided among seven departments as follows: political,[1] interior, justice and police, military affairs, imposts and finance, posts and railways, and commerce, industry, and agriculture. To each is assigned from time to time by the president such subjects for consideration as properly fall within its domain. The constitution stipulates, however, that this distribution shall be made only for the purpose of facilitating the examination and dispatch of business; all decisions must emanate from the Council as a body.[2] Ordinarily a councilor remains at the head of a department through a considerable

[1] The so-called "political" department includes not only foreign affairs, but also the administration of such domestic matters as citizenship, federal election laws, and emigration laws.

[2] Art. 103. Dodd, *Modern Constitutions*, II, 284. For a synopsis of the law of July 8, 1887, making an apportionment of functions among the departments, see Dupriez, *Les ministres*, II, 239–246.

number of years,[1] and it may be added that, by reason of the increasing volume of government business, the department head enjoys a larger measure of independence to-day than formerly. A quorum of the Council consists of four members, and no member may absent himself from a session without excuse. Except on questions of appointment, voting is *viva voce;* and an abstract of proceedings is published in the official gazette of the republic.

Although at certain points resembling a cabinet, the Federal Council is not a cabinet, and no such thing as cabinet government can be said to exist in Switzerland. The Council does, it is true, prepare measures and lay them before the Assembly. Its members even appear on the floor of the two chambers and defend these measures. But the councilors are not, and cannot be, members of the Assembly; they do not, of necessity, represent a common political party, faith, or program; they are not necessarily agreed among themselves upon the merits or demerits of a particular legislative proposal; and if overruled by a majority of the Assembly they do not think of retiring from office.[2] In other words, the Council is essentially what Swiss writers have themselves termed it, *i.e.*, an executive committee of the Federal Assembly. It has a large measure of solidarity, but only for the purposes of routine business. Quite superior to it in every way — so much so that even its ordinary administrative measures may be set aside — is the Assembly, as against which the Council possesses hardly a shred of constitutional prerogative. In the Assembly is vested ultimate authority, and in the event of a clash of policies, what the Assembly orders the Council performs. The relation between the executive and legislative branches of the government is quite as close as it is in a cabinet system; but it is a relation of a totally different sort.[3]

The functions of the Council are executive, legislative, and judicial. On the executive side it is the duty of the body to "execute the laws and resolutions of the Confederation and the judgments of the Federal Court;" to watch over the external interests of the republic and to manage foreign relations; to safeguard the welfare, external and internal, of the state; to

[1] Members of the Council are re-elected, almost as a matter of course, as long as they are willing to serve. Between 1848 and 1893 the average period of service exceeded ten years. Lowell, *Governments and Parties*, II, 203.

[2] The resignation, in 1891, of M. Welti, a member of the Council since 1867, because the people rejected his project for government purchase of railway shares caused general consternation.

[3] For interesting observations upon the advantages and disadvantages of the Swiss system see Lowell, *Governments and Parties*, II, 204–208. See also Vincent, *Government in Switzerland*, Chap. xvi; Dupriez, *Les ministres*, II, 188–203.

make such appointments as are not intrusted to any other agency; to administer the national finances, frame and introduce the budget, and submit accounts of receipts and expenses; to supervise the conduct of all federal officers and employees; to enforce the observance of the federal constitution and the guaranty of the cantonal constitutions; and to manage the federal military establishment. In the domain of legislation it is the duty of the Council to introduce bills and resolutions into the Federal Assembly and to give its opinion upon the proposals submitted to it by the chambers or by the cantons; also to submit to the Assembly at each regular session an account of its own administration, together with a report upon the internal conditions and the foreign relations of the republic.[1] The Council has no veto upon the Assembly's measures. Judicial functions are such as arise from the fact that there are in Switzerland no administrative courts, so that the varied kinds of administrative cases which have been withheld from the jurisdiction of the Federal Tribunal are in practice dealt with directly by the Federal Council, with appeal, as a rule, to the Assembly. This is not an ideal arrangement, and an important step toward a better system was taken in 1914 when, as has been mentioned, an amendment to the constitution authorized the creation of an administrative court to handle such cases arising under federal administrative law as may be assigned to it by the legislature. Thus far, however, the court has not actually been set up.[2]

The Judiciary. — In organization the Swiss federal judiciary is very simple; in functions it is complex. It comprises but a single tribunal, the *Bundesgericht*, or Federal Court. This court, created in 1848, consists to-day of twenty-four judges and nine alternates, all chosen by the Federal Assembly for a term of six years. Any citizen eligible to the National Council may be elected to the Federal Court, but it is incumbent upon the Assembly to take care that all of the three officially recognized languages — German, French, and Italian — are represented. The president and vice-president of the court are named by the Assembly, for a term of two years, but the court is authorized to organize

[1] Art. 102. Dodd, *Modern Constitutions*, II, 282–284; Dupriez, *Les ministres*, II, 218–225.

[2] Art. 113. Dodd, *Modern Constitutions*, II, 286. The nature and functions of the Swiss executive are treated briefly in Brooks, *Government and Politics of Switzerland*, Chap. vi, and Vincent, *Government in Switzerland*, Chap. xvii. An excellent account is Dupriez, *Les ministres*, II, 182–246. Of value are Blumer and Morel, *Handbuch des schweizerischen Bundesstaatsrechts*, III, 34–92, and Dubs, *Le droit public de la confédération suisse*, II, 77–105.

its own secretariat and to appoint the officials thereof. Judges are forbidden to sit in either house of the federal legislature, to occupy any other office, or to engage in any alien pursuit or profession. Their yearly salary is 15,000 francs. Since 1874 the seat of the court has been Lausanne, in the French-speaking province of Vaud.

The original jurisdiction of the Federal Court covers not only ordinary civil and criminal cases but also suits between the federation and the cantons; between the federation and corporations or individuals, when such corporations or individuals appear as plaintiffs, and when the amount involved exceeds three thousand francs ; between cantons; and between cantons and corporations or individuals, upon request of the parties, and when the amount involved exceeds three thousand francs. The constitution authorizes the federation to enlarge, by legislation, the powers of the Court;[1] and from time to time a variety of specific fields of civil jurisdiction have been opened to it, including transportation, debt, and bankruptcy. In addition to original jurisdiction in all matters that have been named, the Court is required by the constitution to exercise appellate jurisdiction in cases carried on appeal, by mutual consent of the parties, from the cantonal courts. For the adjudication of civil cases the Court sets off from its membership two chambers of eight judges each, presided over respectively by the president and vice-president. There is also a chamber of three members for the trial of debt and bankruptcy cases.

The tribunal's criminal jurisdiction is less extensive. It covers, in the main, cases of high treason against the republic, crimes and misdemeanors against the law of nations, political crimes and misdemeanors of such seriousness as to lead to armed federal intervention, and charges against officers appointed by a federal authority, when such authority makes application to the Court. In cases falling in any of these categories the Court is required to employ a jury of twelve men to decide questions of fact. With the consent of the Federal Assembly, criminal cases of other kinds may be referred to the Federal Court by the cantonal governments. For the trial of criminal cases the Court is divided each year into four chambers, each of five or more judges, with two alternates. The Confederation is laid out in three *Assizenbezirke*, or assize districts, and from time to time one of the criminal chambers sits in each.

Within the domain of public law the Court is given cognizance

[1] Art. 114. Dodd, *Modern Constitutions*, II, 287.

of conflicts of jurisdiction between federal and cantonal authorities, conflicts between cantons when arising out of questions of public law, complaints of violation of the constitutional rights of citizens, and complaints of individuals by reason of the violation of concordats or treaties. In actual operation, the range of powers that would appear thus to be conferred is much restricted by a clause which declares that "conflicts of administrative jurisdiction are reserved, and are to be settled in a manner prescribed by federal legislation."[1] Legislation in pursuance of this clause has withdrawn from the jurisdiction of the Court a long list of possible subjects of litigation. Like European courts generally, the Swiss Federal Court has only limited power to determine the constitutionality of law. It may pronounce cantonal laws null because of being inconsistent with federal law; but it must accept and apply all laws and decrees duly enacted by the Federal Assembly. Unlike the federal courts of the United States, the Swiss Federal Court has no means of enforcing its decisions. The duty of enforcement rests mainly upon the cantonal governments, with an ultimate responsibility in the Federal Council.[2]

Two constitutional amendments adopted in 1898 conferred on the federal government power to create uniform codes of civil and criminal law. Formulation of a civil code was at once intrusted to a legal scholar of Bern. His draft was worked over in detail by an expert and representative commission of thirty-two members appointed by the head of the federal department of justice and police, and was given final editorial revision by a special commission of eight. The completed product was adopted by the Federal Assembly in 1907; and so well did it meet the popular desire that no referendum on it was asked. In its original form the code was in four parts, *i.e.*, the law of persons, of marriage, of inheritance, and of property. An act of 1911 added a fifth part, dealing with the law of obligations. The whole took effect January 1, 1912.[3] When work on the civil code was well advanced, preparation of a criminal code was begun. The same general plan was followed: a single expert prepared a trial draft, which was revised by two successive commissions. This code, arranged in three books and 431 articles, was ready in 1917 for consideration by the Federal Assembly;

[1] Art. 112. Dodd, *Modern Constitutions*, II, 286.

[2] On the federal judiciary see Brooks, *Government and Politics of Switzerland*, Chap. vii, and Vincent, *Government in Switzerland*, Chap. xv.

[3] An English version of the complete code is presented in R. P. Schick (trans.), *The Swiss Civil Code of 1907* (Boston, 1915).

and its adoption was expected to follow as soon as war conditions should permit attention to be given it. In contrast with the United States, where neither civil nor criminal law is uniform, and with Canada, where criminal law is uniform but civil law is not, Switzerland has practically attained full uniformity in both, thus approximating the status of the former German Empire, where uniform criminal law dated from 1869 and uniform civil law (except in matters related to land tenure) from 1900.

Political Parties. — Two questions, chiefly, dominated Swiss politics in the first half of the nineteenth century. One was the democratization of the cantonal governments. The other was the conversion of the loose and weak Confederation into a compact and strong federal state. The first of these objects was largely attained between 1830 and 1845; the second was realized in the adoption of the federal constitution of 1848. In the main, the people who favored democracy also favored a closer union; and it was these people, the Liberals, who were responsible for the creation of the new Switzerland of 1848, and who also long remained in control of the system which they had set up. Opposed to them were the elements which, speaking broadly, were reactionary in local politics, Catholic in religion, and "federalist" as opposed to "centralist" in national policy.[1] For some years, therefore, after 1848 there were but two parties, the Liberals and the Clericals, commonly known as the Catholic Conservatives; and the principal political questions centered in the broad issue of state rights.

The Catholic Conservatives have had an unbroken career to this day, although naturally with considerable shifting of policies. But the old Liberal party is now only a shadow of its former self. Very soon after 1848 a cleavage appeared in its ranks between a moderate element and a radical element; and as new, and especially social and economic issues, arose, the latter element steadily gained at the expense of the former, until by 1870 it broke entirely away and set up as a new Radical party. It was this new party that revised the national constitution in 1874 and that, despite the opposition of the old-line Liberals, who clung to purely representative institutions, wrote into that instrument the provision for the federal optional referendum. After this triumph, the Radicals never lost their primacy, notwithstanding the rise of the Socialists, who sprang originally from the

[1] It will be observed that, contrary to usage in early decades in the United States, the term "federalist" was applied to the opponents of a close, centralized union. The Swiss usage was, of course, the more accurate.

Radical ranks, and who even by 1800 were able to secure six seats in the National Council.

The parties of the present day are, therefore, — enumerating from Right to Left, and taking no account of certain propagandist associations, — (1) Catholic Conservatives, (2) Liberal Democrats, (3) Independent Democrats, or Radicals, and (4) Social Democrats.[1] The Catholic Conservative party has for its fundamental object the defense of the Catholic church and the promotion of the special interests of the Catholic population. Without pressing them so far, it clings to the state rights doctrines that underlay the *Sonderbund* war of 1847; although, under impetus supplied by a Christian Socialist organization of Catholic workingmen, it is turning its attention more and more to labor legislation and related subjects. In Uri, the Unterwaldens, and the Appenzells the party occupies the field almost alone; in a dozen other cantons of mixed Catholic and Protestant population it holds its own very successfully against its rivals. No other party is, indeed, so compact, harmonious, or well organized. The Liberal Democrats have fallen upon evil days, and are likely never to see better ones. They comprise chiefly industrial leaders and other men of wealth and prominence, men of cautious disposition, who are interested mainly in economic subjects, and who take pride in upholding as best they can the ancient principle of *laissez-faire* as opposed to the modern paternalistic trend. The party's strength lies mainly in the cantons of Vaud, Geneva, Urban Basel, and Neuchâtel.

The Radical party is distinctively the party of centralization, anti-clericalism, and direct popular government. Its membership is the largest, the most widely diffused, and the most representative; it includes practically all of the leaders of industry and finance who are not Liberals, and it has the support of the bulk of the peasantry, at all events in the Protestant cantons. Being so comprehensive, it is heterogeneous; yet its internal contrasts have never seriously jeopardized its preponderance. The Social Democrats, who are found mainly in such manufacturing cities as Zürich, Basel, and Bern, and who, in general, share the views of their comrades in other lands, especially Germany, have gained considerable numerical strength. Switzerland, however, is a poorer field for socialistic propaganda than most other European countries. It is true that collective ownership

[1] It is significant of the moderation of Swiss politics, however, that members are not seated according to this arrangement in the two legislative halls, but rather according to the part of the country from which they come.

and control of the great industries has made much headway. But this has not come about as a result of socialist influence, and the people understand that they can go as far as they like in this direction without enlisting under the socialist banner. Furthermore, the proportion of petty landed proprietors and other small property holders is too large to admit of opportunity for socialist advances such as have been realized in Germany, Italy, and elsewhere.

For many years after 1874 no party could command a clear majority in either branch of the Federal Assembly. The Radicals, having a substantial plurality, were usually able, however, to have their own way. To this day, they rarely or never have a majority in the Council of States, because of the considerable proportion of cantons that regularly return Catholic Conservatives. But they now have a majority, and far more, in the National Council. The relative strength of the parties in the two chambers immediately prior to the national elections of December, 1917, was as follows:[1]

Party	Council of States	National Council
Catholic Conservatives	16	39
Liberal Democrats	1	13
Independent Democrats (Radicals)	21	108
Social Democrats	1	18
Minor parties and independents	5	11
Total	44	189

Foreign observers invariably remark upon the stability of Swiss political parties and upon the orderliness and quiet of Swiss political life. Except the Social Democrats, no new party of importance has come into the field since 1874. Nor has there

[1] Brooks, *Government and Politics of Switzerland*, 303. Party strength in the National Council following the election of 1878 was: Catholic Conservatives, 35; Liberals, 31; Radicals, 69. After the election of 1881 it was: Catholic Conservatives, 36; Liberals, 26; Radicals, 83. The six triennial elections between 1884 and 1902 produced no important change in these proportions, although beginning in 1890 the Social Democrats regularly obtained a small quota of seats. After the census of 1900 the number of members of the Council was raised from 147 to 167, and the results of the election of 1902 were as follows: Catholic Conservatives, 35; Liberals, 25; Radicals, 97; Social Democrats, 9; Independents, 1. In 1905 the Radicals, who until then had coöperated with the Social Democrats in many constituencies, broke with them upon the question of military policy, with the result that the Social Democratic contingent in the Council was cut to two. In 1908 and 1911 the Social Democrats made, however, some recovery.

been, in this period, any notable change in the status of the older parties, aside from the slow augmentation of Radical strength. Sudden party shifts — break-ups, re-groupings, unprecedented victories — such as are common enough in other lands are unknown. "Counting the Radicals of to-day," says a recent writer, "as an outgrowth from the Liberals of a generation ago, it may be said that the republic has been under the control of a single party from its foundation in 1848." Party life is vigorous, party organization strong, and party influence considerable. Yet party activity is subdued and party rivalry comparatively free from bitterness. For this state of things — the more remarkable when one recalls the keenness of factional strife and the frequency of civil war in earlier times — several explanations suggest themselves. There is little federal patronage to whet the party appetite. There is practically no body of unattached voters which the parties can strive to attract. The people do not elect the federal executive. The referendum and initiative operate on essentially non-partisan lines.[1] Legislative sessions are brief. Finally, professional politicians are almost unknown.

In organization, the parties are very similar. All are, in effect, unions of partly autonomous party groups. The supreme authority is a diet, which meets at least once a year, and is composed of delegates, three or four hundred in number in the case of the larger parties, representing the local organizations. The business of the diet is to hear reports of the party officials, scrutinize the actions of the party's representatives in the Federal Assembly and the Federal Council, and adopt resolutions, following discussion, for the guidance of the party's spokesmen and covering all of the important issues of the day. The diet does not make nominations. Candidates for the Federal Council are named, rather, by caucuses participated in by the party members in the legislative houses; candidates for the Council of States (where the people elect) and for the National Council are selected by local caucuses in which, theoretically at least, all of the party members take part. To carry on the work of the party during the intervals between meetings of the diet, a central committee, usually of thirty to fifty members, is elected, either by the cantonal organizations or by the diet itself; and this committee has a president, secretary, and treasurer, besides, ordinarily, a sub-committee which can meet more frequently and act in the general committee's stead. Party organization, therefore, closely reflects the organization of the state itself. It is built

[1] Lowell, *Governments and Parties*, II, 314–332.

on the twin principles of federalism and democracy; and it is no exaggeration to say that party spirit and methods are on a plane which has been reached in few other countries.[1]

[1] For brief accounts of Swiss political parties see Brooks, *Government and Politics of Switzerland*, Chap. xiii; Lowell, *Governments and Parties*, II, Chap. xiii; J. Macy, "The Swiss and their Politics," in *Amer. Jour. of Soc.*, July, 1896. A valuable monograph is G. Chaudet, *Histoire du parti radical suisse* (Bern, 1917).

4. Germany

CHAPTER XXXIV

THE HOHENZOLLERN EMPIRE AND ITS CONSTITUTION

The German Political Heritage. — "Liberty, that incomparable blessing," wrote Montesquieu in the eighteenth century, "was discovered in the wild forests of Germany." Like most glittering statements, this is but a half-truth. Before the Germanic peoples are heard of in history very substantial liberty was attained in the Greek world, and to a less extent among the early Romans. None the less, by all accounts the Germanic peoples who, between the fifth and tenth centuries, poured into the lands we now know as England, France, Italy, and Spain, and there contributed powerfully to the creation of new racial stocks and new political forms, were above all things jealous of their personal, family, and tribal freedom. Similarly notable for their strong sense of independence were the kinsmen who remained north of the old Rhine-Danube frontier and became the direct ancestors of the Bavarians, Badeners, Württembergers, and Prussians of the present day. It was not to be expected that these peoples — Franks, Saxons, Burgundians, and later Norsemen — would, on account of their impatience of restriction, set up, in either their old or their new homes, republican governments. Wholly apart from the consideration that republican government calls for a high degree of political experience and capacity, the conditions of disorder, war, conquest, and feudal rivalry prevailing throughout the Middle Ages made inevitable the development of kingship and, indeed, the gathering of governmental power largely into autocratic hands. In England, however, this development never went so far as to extinguish all popular elements in the control of public policy and the administration of public business. Even under the strong government of the Norman-Angevin kings, the representative principle made steady headway in justice and finance, and gained a footing which enabled it presently to become the cornerstone of the scheme of national legislation. In France likewise — although the popular element failed to

maintain itself as a working factor outside the domain of local affairs — the idea that the people should have a voice in the determination of national policy repeatedly flared up, notably during the Hundred Years' War (1340–1453), and again in the eighteenth century.

The Germany of the later Middle Ages and of early modern times was by no means without manifestations of a surviving spirit of liberalism. At the close of the fifteenth century there were vigorous attempts to reorganize the Holy Roman Empire (now consisting practically of the German states) on a more popular basis. During the Lutheran Revolt certain elements, especially the peasants of the south, loudly demanded freer forms of government.[1] In the eighteenth century the most illustrious and influential of Prussian kings, Frederick the Great, wrote three treatises admonishing his brother princes that they were not in their positions by any special favor of God, assuring them that the only justification of their occupancy of their thrones was the contribution that they could make to the welfare of their subjects, scoffing at the prevailing notion that the people were merely the private property of the prince, and sharply attacking the Machiavellian doctrine that the ruler is not to be bound by the ordinary principles of morality in promoting the ends of the state. The practical effect of these various movements and arguments, however, was *nil*. The effort to put the Empire on a more popular basis totally failed. The peasant reformers of 1524 were ruthlessly suppressed, Luther himself openly encouraging the princes in the bloody business. There is no record that any ruler was led to mend his ways by Frederick's lecturings; while the latter, by a remarkable series of high-handed acts during his prolonged reign (1740–86) cast grave doubts upon his own sincerity.

The condition in which Germany came down to the nineteenth century was, indeed, deplorable. The Holy Roman Empire lost all vitality, and the German-speaking world was left without the semblance of unity. The three hundred or more states were ruled by despots, petty and great, who cynically disregarded all demands for popular participation in government and ferociously resisted all suggestions that they should subordinate their interests to those of a united nation. Economic life was shackled by a network of gild, town, provincial, and royal regulations. Half of the people were serfs. Militarism and bureaucracy blocked every avenue of reform; popular ignorance and apathy

[1] See E. B. Bax, *The Peasant's War in Germany* (London, 1899).

were, if possible, even greater obstacles. All told, the political heritage which the German people carried into the new century afforded scant basis for governmental development of the sort which already was far advanced in England, and which had been so dramatically inaugurated in the past decade in France.

Autocracy versus Liberalism, 1815–48. — Interest in German political history in the first half of the nineteenth century centers around two interrelated movements, the one looking toward national unity, the other toward constitutional government. The period of the Napoleonic wars made some contribution in both directions. The ground was cleared for a future unification, first by the extinction of more than five sixths of the petty states of earlier times, and second, by the replacing of the nondescript and obsolete Holy Roman Empire (terminated by decree of Napoleon in 1806) by a German Confederation created by the Congress of Vienna in 1814–15.[1] It is true that the immediate effect of reducing the number of states was merely to strengthen the surviving kingdoms and duchies and stiffen them against any attempt to establish an effective common control. It is true, also, that the new Confederation, whose *Bundestag*, or Diet, was hardly more than a congress of ambassadors, was so weak as to be ridiculous. Nevertheless, if the German-speaking world was ever to be united, the number of independent states must be gradually reduced, and a common German government must be set up, which, although at first a sham, might be capable of conversion by degrees into a reality.

The contribution of the Napoleonic period to the cause of liberal government in Germany took the form chiefly of a great Prussian Municipal Edict of 1808 sweeping away the gild oligarchies, broadening the suffrage, and setting up elective executive boards and town councils, at the same time giving the municipalities a larger degree of independence in the management of their own affairs. It is interesting to note that Baron von Stein, who was the author of this reform, desired to introduce the representative principle in the central, as well as the local, government; and he proposed a national elective congress with fairly extensive legislative powers. But the plan met with no favor in princely circles.[2]

[1] In anticipation of the prospective abolition of the dignity of Emperor of the Holy Roman Empire, the Emperor Francis II, in 1804, assumed the title of Emperor of Austria, under the name Francis I.

[2] On Germany during the Napoleonic period see *Cambridge Modern History*, IX, Chap. xi; J. H. Rose, *Life of Napoleon I* (new ed., New York, 1910), II, Chaps. xxiv–xxv; A. Fournier, *Napoleon I, a Biography*, trans. by A. E. Adams (New

The Germany of 1815 was, then, a confederation of thirty-eight practically independent states,[1] united under the perpetual presidency of Austria, having no common organ of discussion except an impotent Diet, and having no common administrative authority at all. Government was in all cases autocratic, and the outlook for both national unity and political liberty was dark. During the next three decades substantial economic solidarity was attained through the building up, under Prussian leadership, of a great *Zollverein*, or Customs Union; and this made political unification in later days somewhat easier. But liberalism advanced slowly, and with much difficulty. The Final Act of the Congress of Vienna (1815) provided not only that "diets should be held in the various federal states" of Germany, but that all of the members of the Confederation should promulgate written constitutions. Beginning in 1816, constitutions were actually granted in one state after another — fundamental laws which in a number of instances continued in operation until the close of the Great War.[2] But most of these instruments were illiberal; none were based upon the doctrine of popular sovereignty; and the two most important states, Austria and Prussia, granted no constitutions at all. Throughout Germany there were numbers of men of liberal inclination who wanted not only written constitutions but parliaments with real powers, and an end of absolutism; and the disappointment of these elements found expression in numerous outbursts at the universities and in more or less violent demonstrations in other quarters. The malign influence of the reactionary Austrian minister, Prince Metternich, rested, however, like a blanket upon all central Europe, and liberalism was effectually crushed wherever it dared show its head. The Prussian king, Frederick

York, 1911), I, Chaps. xi–xii; J. R. Seeley, *Life and Times of Stein; or Germany and Prussia in the Napoleonic Age*, 3 vols. (Cambridge, 1878); and H. A. L. Fisher, *Studies in Napoleonic Statesmanship*, Germany (Oxford, 1903).

[1] In 1817 the number was brought up to 39 by the adding of Hesse Homburg, unintentionally omitted when the original list was made up. By successive changes the number was reduced to 33 before the dissolution of the Confederation in 1866.

[2] The new era of constitution-making was inaugurated by the promulgation of the fundamental law of Schwarzburg Rudolstadt, January 2, 1816. Similar grants followed in rapid succession, in Schaumburg Lippe, January 15, 1816, Waldeck, April 19, 1816; the grand duchy of Saxe Weimar Eisenach, May 5, 1816, Saxe Hildburghausen, March 19, 1818; Bavaria, May 26, 1818; Baden, August 22, 1818; Lichtenstein, November 9, 1818; Wurttemberg, September 25, 1819, Hanover, December 7, 1819; Brunswick, April 25, 1820, and the grand duchy of Hesse, December 17, 1820. Instruments promulgated later during the period under review include those of Saxe Meiningen, in 1829; Hesse Cassel, Saxe Altenburg, and Saxony, in 1831; Hohenzollern Sigmaringen, in 1833; Lippe, in 1836 and Lübeck, in 1846.

William III, repeatedly promised to give a written constitution to his people and to convoke the old "estates," or "orders," with a view to the creation of a national assembly. But the years passed and neither thing was done. The most that the reactionary monarch could bring himself to do was to create local diets in each of the eight provinces of the kingdom. In 1847 his son, Frederick William IV, went so far as to summon a *Vereinigter Landtag*, or "United Diet," comprising all members of the provincial assemblies, and organized in two chambers — a house of lords and a house containing the three estates of the knights, burghers, and peasants. But when the members fell to discussing constitutions and legislative privileges the king reminded them that he was better able to judge political institutions than they were and sent them home. Never, he declared, would he allow "to come between Almighty God in heaven and this land a blotted parchment, to rule us with paragraphs, and to replace the ancient, sacred bond of loyalty."

The Liberal Failure of 1848. — Shortly before the middle of the century Germany, and in particular the kingdom of Prussia, came to the parting of the political ways. Liberalism, driven to cover in the first decade following the restoration of 1815, had none the less deepened and broadened, and awaited only a favorable opportunity to demonstrate its real strength. In the smaller states of the south it was fighting kings and ministers on practically even terms; in Prussia it had permeated the masses to a degree undreamt of in 1815; even in reactionary Austria it had stirred the populace of Vienna and other cities, and had roused the subject nationalities to fresh protests and demonstrations. Not all liberals were agreed upon a program; and this fact proved their undoing when their opportunity came. Originally the most that they hoped for, or indeed desired, was constitutional monarchy; and in 1848 the larger portion would still have been satisfied with that form of government, providing a flexible constitution should leave the way open for such redistributions of power as might prove desirable. But there was now an advanced wing of the party which demanded nothing less than a republic, and in many cases some sort of socialistic organization of the state as well. "There was, indeed, a painful lack of unity and distinctness in the political ideals of the reformers. Some wished to include German Austria in the new state, others to exclude it; some dreamed of a revival of the old Empire in a modern vesture of constitutional rights and liberties, others of a central directory; some thought of the Ger-

many of the future as a federation upon the American model, others as a strong and united republic; but the great central body of the nation, holding that no project could succeed without the support of the princely governments, did not advance beyond the conception of a federation of constitutional monarchies."[1] Professors, students, poets, philosophers, scattered knots of artisans nowhere very numerous save in Baden and the Bavarian Palatinate — these were the chief exponents of the democratic ideal.

The event that brought matters to a head was the revolution at Paris which overwhelmed Louis Philippe's government in February, 1848. Within a month a third of all Germany was in turmoil. The princes, in a panic, began making concessions right and left, and when a *Vorparlament*, convened at Frankfort, called upon the states to send delegates to a special convention to revise the Act of Federation of 1815 "on really national lines," no strong objection was interposed. The parliament which met in the Pauluskirche at Frankfort, May 18, 1848, in response to this invitation was a body such as Germany had never seen before. Its 586 members were elected by manhood suffrage, one for every fifty thousand inhabitants, and represented all the lands from the Vosges to the Vistula, and from the Baltic to the Alps. There were no princes or princes' delegates; and the body was immune from governmental interference. Stated simply, the problem to be worked out was, how to convert a loose confederation of despotically governed principalities into a constitutional, liberal, federal state. Compared with this, the task of our own constitutional convention at Philadelphia in 1787 was easy, and we should not censure too severely the men who failed to find the right solution.

But they were partly at fault. In the first place, they allowed their differences of view (they fell into at least eleven distinct "parties") to involve them in unnecessary conflicts, often over irrelevant matters. In the second place, being largely idealists and enthusiasts, they were swayed too much by theory and not enough by fact. In the third place, they ignored the big, essential difficulty, *i.e.*, the rival ambitions of Austria and Prussia — failure to remove which, as one writer has said, "cost Germany two great wars, the Bismarckian régime, and its present constitution." Finally, the members seem to have been oblivious to the flight of time. The upshot was that by the time when, in 1849, the parliament brought forward its plan, the princes had

[1] Fisher, *Republican Tradition in Europe*, 259.

largely suppressed their rebellious subjects and were in a position to frown down the new scheme. Notwithstanding that there were two hundred men in the convention who called themselves republicans, the plan provided for a constitutional empire, with a parliament of two houses, direct manhood suffrage, and a responsible ministry.

It fell to Frederick William IV of Prussia to administer the fatal blow by refusing the new imperial crown when the parliament solemnly tendered it to him. Crowns, he said, were for him and his peers to give, not to take from any gathering of mere commoners; although it is not unlikely that his decision was dictated chiefly by his desire to avert a war with Austria. The project was approved by a large majority of the states, but by none of those — Austria, Prussia, Bavaria, Saxony, Württemberg — whose assent was indispensable to its success. Accordingly, it collapsed. Thus was enacted a political tragedy. For never again, until 1918, did liberalism have so good an opportunity to give Germany a fresh start toward free and enlightened government. Years afterwards Bismarck wrote that even in the most unsettled days of 1848 the political situation from his point of view had never been "unfavorable," since the real "barometer" of the situation was not "the noise of parliaments great and small," but "the attitude of the troops."[1] It was, unfortunately, through the use of the troops — by "blood and iron" — that the Germany of our day was destined to be made.

Prussian Autocracy Assumes Leadership. — The one tangible gain coming from the revolutionary movement of 1848 in Germany was the constitution granted in Prussia, in 1850, by Frederick William IV.[2] This instrument was disappointing to the liberals. Yet it substituted a bicameral parliament for the outworn "estates," conferred the suffrage on a large portion of the adult male population, and purported to guarantee numerous individual liberties. It remained the fundamental law of the Prussian kingdom until after the Great War.[3] More and

[1] *Reflections and Reminiscences*, I, 66–67.

[2] On the revolution of 1848 in Germany see *Cambridge Modern History*, XI, Chaps. iii, vi, vii; W. H. Dawson, *The German Empire, 1867–1914* (New York, 1919), I, Chaps. i–ii; H. von Sybel, *The Founding of the German Empire*, trans. by M. L. Perrin (New York, 1890–98), I, 145–243; H. Blum, *Die deutsche Revolution, 1848–1849* (Florence and Leipzig, 1897); P. Matter, *La Prusse et la révolution de 1848* (Paris, 1903). The liberal political thought of Germany from Kant to Hegel is briefly but clearly described in W. A. Dunning, "The German Idealists," in *Polit. Sci. Quar.*, June and Sept., 1913.

[3] See p. 712.

more, after 1850, the hopes of the German patriots were centered in Prussia, as leader both in national unification and in the establishment of liberal government. The only other state in the Confederation that was of sufficient size and strength to be a leader was Austria. But Austria, while herself mainly German, was so enmeshed in racial complications that she could never be expected to pursue a purely German policy. Prussia was thoroughly German. Besides, she had not only acquired a constitution, but had succeeded, as Austria had not, in building up an economic union (the *Zollverein*) which afforded an obvious stepping-stone to political unification. By 1860 forward-looking Germans were convinced that the old Confederation would have to be dissolved; that the new Germany would have to be the creation, not of the democratic elements working without the princes, but of one of the great princely states; and that Prussia was the only state prepared to play the rôle. German unification — and for a time German liberalization as well — became synonymous with Prussian success.[1]

With the elevation of Otto von Bismarck, in 1862, to the presidency of the Prussian ministry, events began to move toward the inevitable conclusion. Already King William I — himself a soldier to the core — had been seeking to reorganize the national army, with a view to making it the strongest in western Europe. Opposition in the lower house of Parliament had partially thwarted his plans, and he had been on the point of abdication when, at the advice of friends, he called in Bismarck and told him to save the situation if he could. As a hater of democracy, a believer in divine right, and an ardent supporter of the Hohenzollern dynasty, the new minister stepped into a full control of Prussian affairs which was never relaxed until the Emperor William II chose, in 1890, to dispense with his services. How he told the Budget Committee of the lower chamber that it was "not by speeches and resolutions of majorities, but by blood and iron (*durch Blut und Eisen*), that the great questions of the time were to be decided; how he cajoled, threatened, and finally defied, the refractory *Fortschrittspartei*, or Progressist majority, and, in order to carry out the king's plans for the army, ruled for four years without budgets or parliaments; how he planned a war for the ejection of Austria from the Confederation, and cynically began by dragging the future victim, as an ally, into war, in 1864, with Denmark; how he refused in 1863 to countenance a discussion, under Austrian aus-

[1] Hayes, *Political and Social History of Modern Europe*, II, 180.

pices, of the reorganization of the Confederation, and then, when, in 1866, all was in readiness, threw a bombshell into the political arena by proposing to the Diet his own scheme of reform, whose most important features were the exclusion of Austria and the election of a German national parliament by manhood suffrage; and how, upon Austria's inevitable refusal, he declared the Confederation dissolved and hurled the Prussian army against the tottering Habsburg dominion — all this is history which cannot be related here.

The North German Confederation (1867). — The war of 1866 was short and victory decisive. The new Prussian army cut its way into Austrian territory and practically broke down all resistance in the one great battle of Sadowa, or Königgratz. The terms which Bismarck extended were far more moderate than the king and most other Prussians desired. But they attained the essential object: the proud Habsburg monarchy was compelled not only to acknowledge that the old confederation was no more, but also to agree to the establishment of a new confederation north of the river Main, which Prussia should lead and in which Austria should have no place. The path was now cleared for a real German unification under Prussian leadership. Taking advantage of her military triumph over the lesser states which had fought on the side of Austria, Prussia now annexed Hanover, Hesse-Cassel, Nassau, and Frankfort (in addition to the disputed duchies of Schleswig and Holstein), giving the kingdom five million new inhabitants, and also lands, including the future naval base of Kiel, of the highest strategic value. In the second place, the Berlin government concluded a series of secret military alliances with the now detached states - Bavaria, Baden, Württemberg, and Hesse-Darmstadt - south of the Main; these being followed by economic agreements looking to the early inclusion of the states in the reorganized *Zollverein*.

Finally, the new and long-desired confederation made its appearance. As soon as the terms of peace were settled, in 1866, Bismarck invited the states north of the Main to send delegates to Berlin to discuss plans for the union. All accepted, and the delegates appeared at the Prussian capital in December. A constitution which Bismarck had himself drafted (he is reported to have dictated it to his secretary in a single evening) was provisionally adopted, February 2, 1867, and ten days later a "constituent Bundestag" was elected, by manhood suffrage and secret ballot, to deliberate upon the instrument. After seven weeks of discussion, this body gave its approval by a vote

of 230 to 53. The diets or parliaments of the twenty-two states then ratified the instrument; and on July 1 it went into effect. The principles upon which the system was based were, in brief, autonomy for the individual states; control of foreign relations mainly by the *Bund*, or Confederation; Prussian supervision of the military establishments in peace and war; and a limited participation of the people in decisions upon public policy. The main organs of government were four: (1) the *Praesidium*, or presidency, to be hereditary in the royal family of Prussia; (2) a *Bundeskanzler*, or Federal Chancellor, to assist the President; (3) a *Bundesrath*, or Federal Council, composed of representatives of the governments of the states; and (4) a *Bundestag*, or Diet, consisting of deputies elected by direct vote of the people, and by manhood suffrage. In this scheme appeared all the essential features of the later Imperial government; so that from 1867 the German Empire, under the hegemony of Prussia, was to all intents and purposes, though not in form or name, a reality.

A question that is likely to suggest itself is, why did Bismarck, an ultra-conservative, include in his scheme a popularly elected representative body? The answer was given by himself to certain of his critics at the time. The real radicals, he said, belonged mainly to the middle, bourgeois classes — the professors and other teachers, lawyers and other professional folk, traders and travelers. The masses bade fair, he thought, to prove the actual conservatives, the people who would be willing to be led, the most dependable supporters of a militaristic state. Besides, the powers assigned to the representative chamber were so modest that not much was being risked by bringing it into existence. The general state of good feeling following the late triumphs, marked by the resumption of normal parliamentary activities in Prussia, and by a vote of the hitherto obstructionist lower chamber indemnifying Bismarck for all his high-handed acts during the past four years, undoubtedly was not without effect upon the minister's policy.

The Empire Established (1871). — For the time being, the states south of the Main were left to their own devices, although the constitution of the *Bund* was carefully shaped to permit, and even to encourage, the accession of new members. The patriotic fervor aroused by the war with France in 1870–71 completed a transformation which economic agreements and military alliances had begun. Contrary to the expectation of Napoleon III, the states of the south contributed troops and

otherwise coöperated vigorously with the Prussians throughout the contest, and before its close they let it be known that they were ready to become members of the Confederation. On the basis of treaty arrangements concluded in November, 1870, it was agreed that the North German Confederation should be replaced by a German Empire, and that for the title of president, borne by the Prussian sovereign, should be substituted the title *Deutscher Kaiser*, "German Emperor." Bismarck found it no easy task to persuade the simple-minded old king to accept the new dignity. William wanted his house to keep up the habits of industry and plain living that he had followed from his youth, and he feared that an imperial title would have a seductive influence. Bismarck believed, however, that "by its reminder of days when it meant theoretically more but practically less than now" the title would "constitute an element making for unity and concentration." Consequently he prompted the princes, and also the Prussian parliament, to make a formal request that the ancient title be revived, and the sovereign felt obliged to waive his personal objections. The ceremony of proclamation took place, January 18, 1871, in the Hall of Mirrors in the richly adorned palace of Louis XIV at Versailles, in the presence of the Prussian military and civil leaders and representatives of most of the reigning families of the new Empire, while the cannon were still pounding the beleaguered and fast-weakening city of Paris.[1] An armistice was agreed to on January 28, and the treaty of Frankfort, establishing peace, was signed on May 10.

As ordained in the treaties of November, 1870, ratified subsequently by the *Bundesrath* and the *Bundestag* of the Confederation, and by the legislative assemblies of the four incoming states, the German Empire came legally into existence January 1, 1871. It consisted fundamentally of the Confederation, which in the process of expansion did not lose its corporate identity, together with the four states whose treaties bound them severally to it. The *Bund* was conceived of technically, not as replaced by, but rather as perpetuated in, the new Empire. The accession of the southern states, however, necessarily involved some modification of the original character of the union; and the innovations that were introduced called for a certain amount of change

[1] By dramatic coincidence, it was in this same room that the German delegates set their hand, on June 28, 1919, to the treaty which concluded the Great War — an instrument whose every page testified to the collapse of the high ambitions born of the splendid ceremonial of forty-eight years before.

of the fundamental law upon which the enlarged structure was to be grounded.[1]

The Imperial Constitution. — The elements at hand for making the revised constitution were four: (1) the constitution of the North German Confederation, in operation since 1867; (2) the treaties of November 15, 1870, between the Confederation, on the one hand, and the grand duchies of Baden and Hesse on the other; (3) the treaty of November 23, 1870, which arranged the adhesion of the kingdom of Bavaria, and (4) the treaty of November 25, 1870, between the *Bund*, Baden, and Hesse, on the one side, and the kingdom of Württemberg on the other. Each of these treaties laid down the precise conditions under which the new affiliation should be maintained, these stipulations comprising, in effect, so many projected amendments of the original constitution of the *Bund*.[2] At the initiative of the Emperor there was prepared, early in 1871, a revised draft of the constitution, and in it were incorporated such modifications as were made necessary by the adhesion of the southern states and the creation of the imperial title. On March 31 the Reichstag was convened in Berlin, and the constitutional *projet* was laid before it; already the Bundesrath had given its assent. On April 14 the instrument was approved by the popular chamber, and two days later it was promulgated as the supreme law of the land.

As it came from the hands of its framers, the new constitution

[1] For brief accounts of the founding of the Empire see B. E. Howard, *The German Empire* (New York, 1906), Chap. i; E. Henderson, *Short History of Germany* (new ed., New York, 1916), Chaps. viii–x; *Cambridge Modern History*, XI, Chaps. xv–xvii, XII, Chap. vi; Lavisse et Rambaud, *Histoire Générale*, XI, Chap. viii; Dawson, *German Empire*, I, Chaps. vii–x; A. W. Ward, *Germany 1815–1890* (Cambridge, 1916–18), II; and M. Smith *Bismarck and German Unity* (New York, 1910). A serviceable book is G. B. Malleson, *The Refounding of the German Empire, 1848–1871* (2d ed., London, 1904). More extended presentation of German history in the period 1815–71 will be found in A. Stern, *Geschichte Europas seit den Verträgen von 1815 bis zum Frankfurter Frieden von 1871*, 6 vols. (Berlin, 1894–1911), extending at present to 1848; C. F. H. Bulle, *Geschichte der neuesten Zeit*, 4 vols. (Leipzig, 1886–87), covering the years 1815–85; H. G. Treitschke, *Deutsche Geschichte im Neunzehnten Jahrhundert*, 5 vols. (Leipzig, 1879–94), covering the period to 1848, and trans. by E. and C. Paul under title of *History of Germany in the Nineteenth Century*, 7 vols. (London, 1916–20); H. von Sybel, *Die Begründung des deutschen Reiches durch Wilhelm I* (Berlin, 1889–94), and in English translation under title of *The Founding of the German Empire*, 7 vols. (New York, 1890–98); and H. von Zwiedeneck-Sudenhorst, *Deutsche Geschichte von der Auflösung d. alten bis zur Errichtung d. neuen Kaiserreichs* (Stuttgart, 1903–05). Bismarck's *Reflections and Reminiscences*, trans. by A. S. Butler, 2 vols. (London, 1899), is indispensable, and an admirable brief biography is J. W. Headlam, *Bismarck and the Foundation of the German Empire* (New York, 1899). For full bibliography see *Cambridge Modern History*, X, 826–832; XI, 879–886, 893–898; XII, 869–875.

[2] The first three of these treaties were concluded at Versailles; the fourth was signed at Berlin.

was found to be a judicious amalgamation of the various fundamental documents that have been mentioned, *i.e.*, the constitution of the Confederation and the treaties. Within the scope of its seventy-eight articles most subjects which are ordinarily dealt with in such instruments found ample place: the nature and extent of the legislative power; the composition, organization, and procedure of the law-making bodies; the privileges and powers of the executive; the adjustment of disputes and the punishment of offenses against the national authority; the process of constitutional amendment. The instrument contained, however, elaborate provisions on many matters concerning which constitutions, as a rule, are silent. There was an extended section upon customs and commerce; another upon railways; another upon posts and telegraphs; another upon navigation; another upon finance; and an especially detailed one relating to military organization. In part, the elaboration of these essentially legislative subjects in the constitution was to be attributed to the federal character of the Empire, which entailed a more or less minute enumeration of powers. In a greater measure, however, it arose from the purpose of Bismarck and of William I to smooth the way for the conversion of Germany into the premier military power of Europe. In such matters as transportation, taxation, telegraph service, and, most of all, military administration, no chance must be left for the states to obstruct the great purposes and projects upon which the Empire might later embark. The constitution was, on the other hand, notable for its silence on the status and privileges of the individual. There was provision for a common citizenship, and a guarantee of equal protection for all citizens as against foreign powers. But that is all. There was no bill of rights, and no enunciation of abstract principles. Among instruments of its kind, none was of a more thoroughly practical character.

"I credit to our constitution," declared Bismarck in 1877, "the capacity to develop just as the English constitution has developed." To promote such growth a simple process of formal amendment was provided. Clauses securing special rights to particular states could not be changed without the consent of the states affected;[1] but any other part of the written instrument could be rescinded or amended by a procedure identical with that of ordinary legislation, *i.e.*, by being adopted, by simple majority, in the Bundesrath and the Reichstag and duly promulgated by the Emperor. From one point of view, the process was extremely

[1] Art. 78. Dodd, *Modern Constitutions*, I, 351.

easy. No special machinery had to be called into play, no "ratification" to be awaited. However, it was also provided that any amendment against which as many as fourteen votes were cast in the Bundesrath was to be considered rejected. Since Prussia alone had seventeen votes in that body, and controlled three others, her government could absolutely block any proposed amendment of which it disapproved. The constitution was, accordingly, easy to amend so long as Prussia was willing, but impossible to amend whenever she opposed. It would require the votes of several states — at a minimum, the six votes of Bavaria, the four of Saxony, and the four of Württemberg — to defeat an amendment that Prussia wanted. Between 1873 and 1914 the text of the fundamental law was amended eleven times, the last change being the admission of Alsace-Lorraine to representation in the Bundesrath, under certain restrictions, in 1911. But, as in all nations, the actual governmental system changed in other ways besides formal constitutional amendment, chiefly through ordinary legislation, through interstate agreements, and through custom. Thus it was by ordinary legislation that the several ministries and the Imperial courts were created; by interstate agreement that Prussia had the administration of the state of Waldeck; and by custom that the Emperor exercised the power to initiate legislation, and that the Bundesrath, instead of meeting periodically, was in continuous session.[1]

Federal Character of the Empire. — The political system of Germany up to the collapse of the Imperial régime in 1918 was the product of centuries of particularistic statecraft, capped, in 1871, by a partial centralization of sovereign organs and powers. The Empire was composed of twenty-five states: the four kingdoms of Prussia, Bavaria, Saxony, and Württemberg; the six grand-duchies of Baden, Hesse, Mecklenburg-Schwerin, Saxe-Weimar, Mecklenburg-Strelitz, and Oldenburg; the five duchies of Brunswick, Saxe-Meiningen, Saxe-Altenburg, Saxe-Coburg-Gotha, and Anhalt; the seven principalities of Schwarzburg-Sonderhausen, Schwarzburg-Rudolstadt, Waldeck, Reuss Älterer Linie, Reuss Jüngerer Linie, Lippe, and Schaumburg-Lippe;

[1] The text of the Imperial constitution, in German, is printed in Lowell, *Governments and Parties in Continental Europe*, II, 355–377, and in Laband, *Deutsches Reichsstaatsrecht*, 411–428; in English, in Dodd, *Modern Constitutions*, I, 325–351, in Goodnow, *Principles of Constitutional Government*, 352–368; and in Howard, *German Empire*, 403–435. Carefully edited German texts are: L. von Rönne, *Verfassung des deutschen Reiches* (8th ed., Berlin, 1899), and A. Arndt, *Verfassung des deutschen Reiches* (Berlin, 1902). On the formation of the constitution see A. Lebon, "Les origines de la constitution allemande," in *Ann. de l'École Libre des Sci. Polit.*, July, 1888, and *Études sur l'Allemagne politique* (Paris, 1890).

and the three free cities of Hamburg, Bremen, and Lübeck. These states varied in size from Prussia, with 134,616 square miles, to Bremen, with 99; and in population, from Prussia, with 40,163,333, to Schaumburg-Lippe, with 46,650. There was, in addition, the *Reichsland*, or Imperial domain, of Alsace-Lorraine, whose position until 1911 was that of a purely dependent territory, but which by act of the year mentioned was raised to quasi-statehood.

Prior to the formation of the North German Confederation, each of the twenty-five states was sovereign and essentially independent. Each had its own governmental establishment, and in many instances the existing political system was of considerable antiquity. With the organization of the *Bund*, those states which were identified with the federation yielded their independence, and presumably their sovereignty; and with the establishment of the Empire, all gave up whatever claim they as yet maintained to absolute autonomy. Both the *Bund* and the Empire were creations, strictly speaking, of the states, not of the people; and to the last, as a German jurist has put it, the Empire was "not a juristic person composed of fifty-six million members, but of twenty-five members."[1] At the same time, it was not what the old Confederation of 1815 was, *i.e.*, a league of princes. It was a state established by, and composed of, states. The Germans were not themselves altogether agreed upon the precise location of sovereignty; but it is reasonably clear that sovereignty, in the proper meaning of that much misused term, was vested in the government of the Empire and not in that of any state. The embodiment of that sovereignty, as will appear, was not the national parliament, nor yet the Emperor, but the Bundesrath, which represented the "totality" of the affiliated governments.[2]

[1] P. Laband, *Das Staatsrecht des deutschen Reiches* (4th ed., Tübingen, 1901), I, 91.

[2] On the juristic aspects of the Empire the best work in English is Howard, *German Empire* (Chap. ii, on "The Empire and the Individual States"). There is a good brief statement in F. Krüger, *Government and Politics of the German Empire* (Yonkers, 1915), Chap. iv. A useful volume covering the governments of Empire and states is Combes de Lestrade, *Les monarchies de l'Empire allemand* (Paris, 1904). The monumental German treatise is Laband, *Das Staatsrecht des deutschen Reiches*, mentioned above, in four volumes. There is a six-volume French translation of this work, *Le droit public de L'Empire allemand* (Paris, 1900-04). Other German works are: O. Mayer, *Deutsches Verwaltungsrecht* (Leipzig, 1895–96); P. Zorn, *Das Staatsrecht des deutschen Reiches* (2d ed., Berlin, 1895–97); and A. Arndt, *Das Staatsrecht des deutschen Reiches* (Berlin, 1901). There is a four-volume French translation of Mayer's important work, under the title *Le droit administratif allemand* (Paris, 1903-06). Two excellent brief German treatises are: P. Laband, *Deutsches Reichsstaatsrecht* (3d ed., Tübingen, 1907), and Hue de Grais, *Handbuch der Verfassung*

The Empire and the States: Division of Powers. — The federal character of the Empire called for a division of the powers of legislation, administration, and justice between the Imperial governmental establishment and the states. As in our own country, the powers of the federal government were specific, and enumerated; while those of the states were broad, undefined, residual. It is inconceivable that the lesser states would have entered a union formed, and likely to be dominated, by Prussia on any other terms. Through constitutional amendment, and even through legislation and custom, the Imperial government could bring about an enlargement of the powers that had been confided to it; but until it did so in any particular direction the power of the state governments in that direction was unlimited. On the one hand, there was a considerable field of legislative activity — in respect to citizenship, tariffs, weights, measures, coinage, patents, military and naval establishments of the Empire, etc. — in which the Empire, by virtue of constitutional stipulation, had exclusive power to act.[1] On the other hand, there was a no less extensive domain reserved entirely to the states — the determination of their own forms of government, of laws of succession, of relations of church and state, of questions pertaining to their internal administration; the framing of their own budgets, police regulations, highway laws, and laws relating to land tenure; the control of public instruction. Between lay a broad and shifting area, which was shared by the two. "The matters over which the states preserve control," wrote Laband years ago, "cannot be separated completely from those to which extends the competence of the Empire. The various powers of government are intimately related one to another. They run together and at the same time impose mutual checks in so many ways, and are so interlaced, that one cannot hope to set them off by a line of demarcation, or to set up among them a Chinese wall of division. In every sphere of their activity the states encounter a superior power to which they are obliged to submit. They are free to move only in the circle which Imperial law-making

und Verwaltung in Preussen und dem deutschen Reiche (18th ed., Berlin, 1907). The most recent work upon the subject is F. Fleiner, *Institutionen des deutschen Verwaltungsrechts* (Tübingen, 1911). A valuable monograph is J. du Buy, *Two Aspects of the German Constitution* (New Haven, 1894). For a comparison of the German constitution with the American and English constitutions, see O. Gierke, "German Constitutional Law in its Relation to the American Constitution," in *Harvard Law Rev.*, Feb., 1910.

[1] Matters placed under the control of the Empire and made subject to Imperial legislation are enumerated in the sixteen sections of Article 4 of the constitution. Dodd, *Modern Constitutions*, I, 327–328.

leaves open to them. That circle does exist. It is delimited, but not wholly occupied, by the Empire. . . . In a certain sense it may be said that it is only by suffrance of the Empire that the states maintain their political rights at all, and that, at best, their tenure is precarious." [1]

It may be observed that there was, in fact, a distinct tendency toward the reduction of the sphere of authority formerly left to the states. One of the means by which this was brought about was the establishment of uniform codes of law throughout the Empire, containing regulations upon a multitude of subjects which otherwise would have been dealt with by the states alone. Most important among these was the great Civil Code, which went into effect January 1, 1900. Another means to the same end was the increase in later years of Imperial legislation relating to workingmen's insurance, factory regulations, industrial conditions, and other matters of a social and economic nature. Furthermore, there was no power in the courts to pass upon the constitutionality of Imperial laws and acts, and thereby to keep the Imperial authority within bounds. Many times in the past fifteen or twenty years the states, or some of them, raised protest against this centralizing tendency, and especially against the "Prussianization" of the Empire which it seemed clearly to involve. In many states, especially those south of the Main, the separatist tradition continued strong throughout the entire Imperial period. In Bavaria, more than anywhere else, was this true, and in 1903 a new premier of that country was able to arouse genuine enthusiasm for his government by a solemn declaration before the Diet that he and his colleagues would combat with all their might "any attempt to shape the future of the Empire on lines other than the federative basis laid down in the Imperial constitution."

The functions of a legislative character delegated to the Imperial government were numerous and comprehensive, and in practice they constantly tended to be increased. Functions of executive and judicial nature were very much more restricted. In respect to foreign relations, the navy, and the postal and telegraph service, administration was absolutely centralized in the organs of the Empire; in respect to everything else, administrative functions were performed entirely, or almost entirely, through the agency of the states. Military administration was, indeed, centralized; but in the hands of Prussia rather than in those of the Empire. In the United States the

[1] Laband, *Das Staatsrecht des deutschen Reiches*, I, 102–103.

federal government is essentially complete within itself. It has its own lawmakers, administrators, and judges, who carry on the national government largely independently of the governing agencies of the various states. In Germany, where the state as such has occupied a more exalted position than does its counterpart in America, the central government, in all save the fields that have been mentioned, depended for the execution of its measures upon the officials of the states, not as a matter of constitutional requirement, but out of considerations of convenience. The Empire established taxes and customs duties, but the states collected them. Similarly, justice was rendered, not in the name of the Empire, but in the name of the several states, and by judges in their employ.

So far as machinery went, the Imperial government was, therefore, but part of a government. Standing alone, it could not be made to operate. It lacked a judiciary; likewise the larger portion of the administrative agencies without which powers of legislation are futile. To put the matter succinctly, the working government of the Empire comprised far more than the organs and functions that were purely Imperial; it comprised the federal organs and functions possessed by the individual states as well.[1]

The Privileged States. — Legally, the union of the German states was indestructible. The Imperial government was vested with no power to expel a state, to unite it with another state, to divide it, or in any way to alter its status in the federation without its own consent. On the other hand, no state had a right to secede, or to modify its powers or obligations within the Empire. If a state violated its obligations or refused to be bound by the authority of the Empire, the federal army, on decision of the Bundesrath, might be mobilized by the Emperor against it.[2]

Among the states, however, there was no pretense of equality of status and privilege. When the Empire was formed the federated states differed widely in area, population, and traditional rights, and there was no attempt to reduce them to an absolutely uniform footing. Prussia, besides being the moving spirit in the new affiliation, contained a population considerably in excess of that of the other twenty-four states combined. The consequence was that Prussia inevitably became the preponderating power in the Empire. The king of Prussia was *ex-officio* German

[1] Lebon, *Études sur l'Allemagne politique*, 93–104.
[2] Art. 19. Dodd, *Modern Constitutions*, I, 332.

Emperor; the Prussian votes in the Bundesrath could defeat any proposed amendment of the constitution, and likewise any measure looking toward a reduction of the army or navy or a decrease of the taxes; and Prussia controlled the chairmanship of all standing committees in the Bundesrath except the committee on foreign affairs.[1]

Other privileges Prussia had by virtue, not of the constitution, but of agreements with her sister states. The most important of these related to the army. The constitution provided at the outset that the armed forces of the Empire should be organized into a single establishment, to be governed by Imperial law and to be under the supreme command of the Emperor.[2] In the appointment of minor officers, and some other matters, powers of jurisdiction were left, however, to the individual states. These powers were in themselves worth little, and in the course of time all of the states save Bavaria, Saxony, and Württemberg were brought to the point of yielding to Prussia the slender military authority that remained in them.[3]

In this manner Prussia acquired the right to recruit, drill, and officer the contingents of twenty-one states — a right which appreciably increased her already preponderant authority in all affairs of a military character. As matters stood prior to 1914, there was, technically, no *German* army, just as there was no *German* minister of war. Each state maintained its own contingent, which was normally stationed within that state. By virtue of the treaties, however, all contingents save those of Bavaria, Saxony, and Württemberg were administered precisely as if they formed integral parts of the Prussian establishment and were organized on the same principles.[4]

Prussia, however, was not the only state that enjoyed privileges under the Empire peculiar to itself. When the states of the south became members of the federation all put forward certain *Sonderrechte*, or reserved rights, whose acknowledgment was made the condition upon which they came into the union. Württemberg and Bavaria retained on this basis the administration

[1] A. Lebon, "La constitution allemande et l'hégémoine prussienne," in *Ann. de l'École Libre des Sci. Polit.*, Jan., 1887. The committee on foreign affairs, whose chairmanship was held by Bavaria, was of little practical importance. To 1906, it was never convened. Thereafter it met occasionally, and in the Great War frequently.

[2] Arts. 61, 63, 64. Dodd, *Modern Constitutions*, I, 345–347.

[3] The first of the Prussian military treaties — that concluded with Saxe-Coburg-Gotha — dates from 1861; the last — that with Brunswick — from 1885.

[4] Howard, *German Empire*, Chap. xii; Laband, *Das Staatsrecht des deutschen Reiches*, §§ 95–113; C. Morhain, *De l'empire allemand* (Paris, 1886), Chap. xv

of posts and telegraphs within their boundaries, and Württemberg, Bavaria, and Baden had exclusive right to tax beers and brandies produced within each state respectively. Bavaria retained the administration of her own railways. At one time it was feared that the special privileges given the southern states would prove a menace to the stability of the Empire; but the apprehension proved groundless.[1]

The additional fact may be noted that under the Imperial constitution the right to commission and dispatch diplomatic (although not consular) agents was not withdrawn from the individual states. In most instances, however, the maintenance of diplomatic representatives abroad was long ago discontinued. Saxony, Bavaria, and Württemberg retained in 1914 only their posts at Vienna, St. Petersburg, and the Vatican.

[1] Laband, *Das Staatsrecht des deutschen Reiches*, §§ 11–13.

CHAPTER XXXV

THE IMPERIAL GERMAN GOVERNMENT[1]

The Emperor: Status and Privileges. — Under the North German Confederation of 1867–71 the king of Prussia had supreme command of the federal army and navy, and also numerous purely governmental functions, including control over the sessions of the Bundesrath and Bundestag, the appointment of the Chancellor and of other federal officials, the publication of the federal laws, and a general supervision of the federal administration. These powers were exercised by the king partly in the capacity of *Bundesfeldherr*, or commander-in-chief of the federal forces, partly in the capacity of *Bundespräsident*, or principal magistrate. Upon the accession of the south German states in 1870–71, Bismarck, as has been related, determined to bring again into use the title of emperor, although he recognized as clearly as any one that between the empire that was now assuming form and the empire that had been extinguished in 1806 there was no historical connection. The constitution of April 16, 1871, accordingly stipulated: "to the king of Prussia shall belong the presidency of the Confederation, and he shall bear the title of *Deutscher Kaiser* [German Emperor]."

The revival of the Imperial title and dignity was intended to work no change in the status of the *Bundespräsident*, except as regarded his official designation and certain of his personal privileges. It will be observed that the title adopted was not "Emperor of Germany." That would imply direct sovereignty over the entire country, whereas the purpose was that the Emperor, while a *German* Emperor, should be only what the *Bundespräsident* had been, *i.e.*, *primus inter pares* in a confederation of *Landesherren*, or territorial princes. He was himself to be a territorial sovereign only in Prussia.[2] The title, therefore, did

[1] This chapter describes the national government of Germany as it was up to the changes which immediately preceded the armistice of November 11, 1918.

[2] At a banquet on the occasion of the coronation of Tsar Nicholas II Prince Ludwig of Bavaria made a vigorous attack upon a speaker who had alluded to the princes attending this function as being in the retinue of Prince Henry of Prussia, brother and representative of the Emperor. In emphatic terms, the proud Bavarian reminded his hearers that the German princes were not the vassals, but the federal partners, of the Prussian king.

not denote a monarchy of the usual sort. There was no Imperial crown, no Imperial civil list, no Imperial " office " as such. The king of Prussia, in addition to his purely Prussian prerogatives — and they were very great — was by the Imperial constitution vested with the functions of the old *Bundespräsident*, plus the function of bearing the Kaiser title; that was all. Apart from the Prussian crown the Imperial function did not exist; from which it followed that there was no law of Imperial succession apart from the Prussian law regulating the tenure of the Prussian throne,[1] and that in the event of a regency in Prussia the regent would, *ipso facto*, exercise the functions of Emperor. Chief among the privileges which the constitution or subsequent law bestowed upon the Kaiser as such were special protection of person and family, and absolute exemption from legal process. Responsible to no superior earthly authority, the Emperor could not be brought for trial before any tribunal, nor be removed from office by any judicial proceeding. Assaults upon his person were punishable with death, and attacks in speech or writing which constituted *lèse majesté* were subject to special and severe penalties.[2]

The Emperor: Legislative, Judicial, and Executive Powers. — The king of Prussia being *ipso facto* Emperor, the royal and Imperial functions which were combined in the hands of the one monarch were of necessity closely interrelated. Some powers belonged to him solely by virtue of his position as king of Prussia. Others, of an Imperial nature, he possessed by reason of the fact that, being king of Prussia, he was also Emperor. In practice, if not in law, there were still others which arose from the preponderance of the Prussian kingdom as a state within the Empire — the power, in general, of imparting a bent to Imperial policy such as would not have been possible if, for example, the king of Württemberg had been Emperor, rather than the king of Prussia.

The powers that went with the Imperial title fell into three general classes — legislative, judicial, and executive. The constitution, in the first place, gave to the Emperor the right to convene the Bundesrath and the Reichstag, and to open, adjourn, and close them; although it is to be observed that for many years before the Great War the Bundesrath was, as a matter of fact, almost continuously in session. Under the letter of the law, the Reichstag could be dissolved (entailing a general election within

[1] Arts. 53–58 of the Prussian constitution. See p. 658.
[2] R. C. Brooks, "Lèse Majesté," in *Bookman*, June, 1904.

sixty days) only by the Bundesrath; but in practice dissolution was ordered by the Emperor with the Bundesrath's consent. In the second place, bills passed by the Bundesrath were laid before the Reichstag in the name of the Emperor. So far as the law went, the Emperor, as such, had no right of initiative in legislation, but practically such a right was freely exercised. In the third place, it fell to the Emperor to promulgate the laws after they were duly passed. As Emperor, he had no general right of veto. He might refuse to publish a law on the ground of alleged irregularity in its enactment, but he was given no power to withhold a measure because of its contents. However, as king of Prussia he controlled enough votes in the Bundesrath to impose an absolute check upon constitutional amendments and to impede other kinds of legislation to which he was opposed. Finally, in so far as was permitted by the constitution and the laws, he might issue ordinances under the countersignature of the Chancellor.

Of judicial powers, two were of chief importance. On motion of the Bundesrath, the Emperor appointed (although he could not remove) the members of the *Reichsgericht*, or Imperial Court; and the Code of Criminal Procedure stipulated that in cases in which the Imperial Court should have rendered judgment as a tribunal of first instance, he should have the power of pardon. The pardoning power was extended likewise to cases decided in consular courts, prize courts, and other tribunals specified by law.

Finally, the execution of Imperial laws was intrusted to the Emperor, with, however, the important qualification that measures of the Imperial government whose execution was not otherwise provided for by the constitution, or by the laws themselves, were enforced by the authorities of several states. There were, however, Imperial agents whose business it was to inspect the execution of Imperial measures by the states and to bring infractions or omissions to the Emperor's attention. When such delinquencies were deemed sufficiently serious, the Emperor might report them to the Bundesrath, and that body might order an "execution," *i.e.*, a show of military force, under the direction of the Emperor, to coerce the erring state. Incident to the general executive function was the power to make appointments. The constitution stipulated that the Emperor, in addition to appointing the Imperial Chancellor, should appoint Imperial officials, require of them an oath to the Empire, and, when necessary, dismiss them. The position which the Chan-

cellor occupied in the Imperial administrative system was such that the power of appointing to, and of removing from, the chancellorship was in itself of the utmost importance; and the Kaiser's control of administration was still farther increased by his power to appoint and remove subordinate officials. Practically, the administrative hierarchy, from the Chancellor down, was in his hands.

The Emperor: Control of Foreign Relations and the Military Establishment. — "The Kaiser," said the Imperial constitution, "shall represent the Empire in international matters and in the name of the Empire shall declare war and make peace, shall enter into alliances and treaties with foreign states, and shall accredit ambassadors and receive them."[1] The control which this clause gave over foreign relations was practically unlimited. The Emperor appointed and received all Imperial ambassadors and ministers; and, as has been observed, only the Imperial, not the state, diplomatic representatives were any longer of importance. The consuls, also, were appointed exclusively by the Emperor, in consultation with the Bundesrath committee on trade and commerce. The unrestricted power to appoint ambassadors and ministers was systematically employed by William II to prepare the way for German world dominion. One need only cite the selection of the crafty Barron Wangenheim a decade ago to bring Turkey completely under German control, and of the mild-mannered Prince Lichnowsky (although he seems to have been an innocent tool) in 1912 to lull England into a false sense of security. No treaty could be made without the Emperor's assent; and, in the main, the initiative in treaty-making lay with him. The only restriction was the provision of the constitution that, so far as treaties related to matters which were to be regulated by Imperial legislation, "the consent of the Bundesrath is required for their conclusion, and the approval of the Reichstag is necessary to make them valid."[2] The power to make war and peace was qualified in the constitution by the requirement that war should be declared only with the consent of the Bundesrath, "unless an attack is made upon the federal territory or its coasts." It is necessary to observe, however, in the first place, that, as king of Prussia the Emperor absolutely controlled upwards of one-third of the votes in the Bundesrath and, second, that if the Emperor wanted war it was a matter of no great difficulty to bring about an international situation such

[1] Art. 11. Dodd, *Modern Constitutions*, I, 330.
[2] Art. 11, clause 3. *Ibid.*, I, 331.

that it could be alleged that an attack was going to be made upon the "federal territory or its coasts." This is precisely what was done in 1914.[1]

Finally, the Emperor was commander-in-chief of the armed forces of the Empire. The case of the navy was simple. When the North German Confederation was formed, no state entering the union had a navy except Prussia. This Prussian navy was, of course, taken into the *Bund*, and eventually into the Empire. The other states began to contribute to its support; but it continued under the absolute control of the Prussian king, now Emperor, and it was never anything but a unitary establishment. Until 1889 the commanding admiral was an appointee of the Emperor; after that date the Emperor himself. Naval affairs were administered through the Imperial Naval Office at Berlin, presided over by a secretary of state who, although nominally responsible to the Chancellor, always enjoyed a large amount of independence. From 1897 to 1916, this post was filled by the author of Germany's submarine campaign in the Great War, Grand-Admiral von Tirpitz.

The status of the army was more complicated. Each member of the *Bund*, prior to 1867, had its own army, organized and equipped under its own laws. Each now placed its army, as a contingent, at the service of the federation, yet without surrendering it completely; and up to the collapse of the Imperial system in 1918 the organization presented a unique combination of unitary and federal features. Technically, each state had its own army, and the rulers of the several states were the heads of their respective contingents. But these contingents were recruited, organized, equipped, and drilled under Imperial law; their strength was fixed by the Imperial legislative bodies; all expenses of maintenance were paid out of the Imperial treasury; and the Emperor was commander-in-chief, with full powers of inspection, appointment, and mobilization in time of peace, and with unlimited authority in time of war. The only contingents which retained special privileges were those of Bavaria, Württemberg, and Saxony. In so far as military administration was centralized, it was carried on through the Prussian ministry of war; for just as, in the eye of the law, there was no Imperial army, so there was no Imperial war ministry. If, however, the law knew no Imperial army, but only a combination of state contingents, these contingents none the less formed, as the world

[1] D. P. Myers, "Legislatures and Foreign Relations," in *Amer. Polit. Sci. Rev.*, Nov., 1917, pp. 654–664.

has good reason to know, a wholly unified fighting force under the Imperial command. With the world's second navy at his absolute call, with a military system which aimed to pass the whole able-bodied male population of the Empire through the army, with power to mold this army on almost any pattern, with all officers and men under personal oath of allegiance to him, and with means of turning both army and navy loose upon the world almost at will, the Kaiser had indeed become, by 1914, the chief war lord of modern times.[1]

The Chancellor: Functions. — Within the domain of Imperial government the place filled in other political systems by a ministry or cabinet was occupied by a single official known as the *Reichskanzler*, or Chancellor. When the constitution of 1867 was framed Bismarck sought to secure for the new federal government a high degree of administrative unity, and at the same time to provide for himself a place of becoming dignity and power, by giving the Chancellor no colleagues, and by making him responsible solely to the *Bundespräsident*. The plan tended, of course, toward a thoroughgoing centralization in Imperial affairs and an utter negation of anything in the nature of cabinet government. The subject was reopened for discussion in 1871, and the liberal elements in the constituent Reichstag forced a modification, of such a sort that when the constitution assumed final form it contained not merely the stipulation, "The Imperial Chancellor, to be appointed by the Emperor, shall preside in the Bundesrath and supervise the conduct of its business," but also the following provision: "The decrees and ordinances of the Emperor shall be issued in the name of the Empire, and shall require for their validity the countersignature of the Imperial Chancellor, who thereby assumes the responsibility for them."[2]

Before alluding farther to this matter of responsibility it will be well to state briefly who the Chancellor was and what his part was in carrying on the work of government. As has been indicated, he was appointed by the Emperor, and he must be a member of the Bundesrath; although if the Emperor desired to ap-

[1] On the military and naval power of the Emperor see Howard, *German Empire*, Chap. xii; Krüger, *Government and Politics of the German Empire*, Chaps. xii-xiii; and Laband, *Deutsches Reichsstaatsrecht*, 345–359. General references on the legal position of the Emperor include Howard, *op. cit.*, Chap. iii; Krüger, *op. cit.*, Chap. vii; J. W. Burgess, "The German Emperor," in *Polit. Sci. Quar.*, June, 1888; Laband, *Das deutsche Kaiserthum* (Strassburg, 1896); R. Fischer, *Das Recht des deutschen Kaisers* (Berlin, 1895); K. Binding, *Die rechtliche Stellung des Kaisers* (Dresden, 1898); R. Steinbach, *Die rechtliche Stellung des deutschen Kaisers verglichen mit des Präsidenten der Vereinigten Staaten von Amerika* (Leipzig, 1903).

[2] Arts. 15 and 17. Dodd, *Modern Constitutions*, I, 331.

point a man who at the moment had not a seat in that body, he could easily do so, since as king of Prussia he also named Prussia's Bundesrath delegates. Speaking broadly, the functions of the Chancellor were twofold. The first arose from his position in the Bundesrath. Not only did he represent in that body, as did his Prussian colleagues, the king of Prussia; he was vested with the chairmanship of it and with the supervision of its business. He fixed the dates of its sessions. Through his hands passed all communications and proposals, from the states as well as from the Reichstag, addressed to it, and he was its representative in all of its external relations. In the name of the Emperor he laid before the Reichstag all measures enacted by the Bundesrath; and as a member of the Bundesrath, although not as Imperial Chancellor, he appeared on the floor of the Reichstag to advocate and explain proposed legislation. Measures enacted into law were binding only after they had been proclaimed by the Chancellor, in the name of the Emperor, such proclamation being made normally in the official *Reichsgesetzblatt*.

A second function, so inextricably intertwined with those just mentioned as to be sometimes not clearly distinguishable in practice from them, was that which arose from the Chancellor's position as the principal executive official of the Empire, second only to the Emperor himself. As has been pointed out, the work of administration was largely decentralized, being left to the states; but the ultimate administrative *authority* was very highly centralized, being gathered in the hands of the Chancellor in a measure not paralleled in any other nation of western Europe. As an executive and administrative official, the Chancellor has been described with aptness as the Emperor's "other self." He was appointed by the Emperor; he could be dismissed by him; he performed his functions solely as his agent and assistant.

Prior to 1870, the executive functions of the Confederation were vested in a single department, the *Bundeskanzleramt*, or Federal Chancery, which was organized in three sections — the "central office," the postal office, and the bureau of telegraphs. For the time being, affairs pertaining to the army, the navy, and foreign relations were confided to the care of the appropriate ministries of Prussia. In 1870 a separate federal department of foreign affairs was created, and in the following year a federal department of marine. One by one, other departments were established, until in 1879 the process was completed by the conversion of what remained of the *Bundeskanzleramt* into a department of the interior. The status of these departments, however,

was from the outset totally unlike that of the corresponding branches of other governments. They were, in effect, only bureaus of the Imperial Chancery, and their heads formed in no sense a collegiate ministry or cabinet. Each official in charge of a department owed his position absolutely to the Chancellor, to whom — rather than to either the Reichstag or the Emperor — he was directly responsible. Some of the more important officials bore the title of "secretary of state," but in any case they were legally nothing more than expert and essentially non-political functionaries of the administrative hierarchy, answerable to the Chancellor for all that they did.[1] Of principal departments there were seven: the Foreign Office, the Colonial Office, the Home Office, the Department of Justice, the Treasury, the Admiralty, and the Post-Office. In the nature of things, some were more important than others; and in addition there were several Imperial bureaus, notably those of Railways, the Bank, and the Debt Commission. Throughout all branches of the Imperial administrative service appointments and dismissals were made by the Chancellor, in the name of the Emperor; and the same authority promulgated all important administrative regulations.

Absence of Ministerial Responsibility. — As has been pointed out, the Imperial constitution said that the decrees and ordinances of the Emperor were binding only if they bore the countersignature of the Imperial Chancellor, "who thereby assumes the responsibility for them." German writers on constitutional law have produced a small library of monographs on the subject of the Chancellor's responsibility. Some regard it as a legal responsibility, some as political, some as only moral. Furthermore, to whom did responsibility lie? The constitution made no answer, and various views have been put forward. How was responsibility to be enforced? Again the constitution was silent and the commentators disagreed.

The truth is that most of the discussion merely befogs a situation which to the detached observer is perfectly clear. The clause cited was an excrescence upon the real, organic constitution of 1867, devised merely to allay criticism, and having no actual worth or meaning. It was appropriated almost bodily from the

[1] At the same time it is to be observed that, in practice, the more important state secretaries were apt to sustain a relation with the other organs of government which was somewhat closer than might be inferred from what has been said. Occasionally they sat in the Bundesrath, and by reason of that fact were privileged to defend their measures in person on the floor of the Reichstag. Frequently, too, they were members of the Prussian ministry.

constitution of the kingdom of Prussia, where also the provision was of little real import. In the sense in which the ministers of England and France are responsible, the German Chancellor was not responsible at all. He was answerable in all matters to his Imperial master, who could instruct, admonish, censure, or remove him at any moment. But, whatever theories may be spun upon the subject, other responsibility, in practice, he had none. Hence it matters very little whether his hypothetical responsibility — to Bundesrath, to Reichstag, or to some other agency — was legal or political. No machinery whatsoever was provided for the enforcement of responsibility to *any* authority except the Emperor. The ministers in turn, being subject to the full and direct control of the Chancellor, likewise bore no responsibility except to him, and through him to the Emperor. "In Germany," declared Chancellor von Bülow in 1906, "the ministers are not organs of the Parliament and of its temporary majority, but they are the intrusted representatives of the Crown." In an impassioned speech in the Reichstag in 1912, prompted by a storm of protest against the Emperor's alleged threat to withdraw the newly granted constitution of Alsace-Lorraine, Chancellor von Bethmann-Hollweg stated the theory and fact of his office thus: "No situation has been created for which I cannot take the responsibility. As long as I stand in this place I shield the Emperor. This not for the courtier's considerations, of which I know nothing, but as in duty bound. When I cannot satisfy this my duty you will see me no more in this place." These several statements were literally true, and never more so than in the days of the chancellors who uttered them. Bismarck enjoyed a large measure of independence. But William II's chancellors — even the independent-spirited Caprivi and von Bülow, ever jealous of his personal prestige — tended to become mere personal secretaries, with very little power of initiative. To do the Kaiser's bidding was their sole function.[1]

Up to the armistice of 1918, at all events, the cabinet system of government, whose corner-stone is the full and continuous responsibility of the executive to an elected parliamentary assembly, did not exist within the length and breadth of Germany. There had long been strong demand for it by the liberal elements, including in later days the Liberal, Radical, and Social-Demo-

[1] Shepard, "Tendencies toward Ministerial Responsibility," *Am. Polit. Sci. Rev.*, Feb., 1911. Cf. J. Barthélemy, *Les institutions politiques de l'Allemagne contemporaine* (Paris, 1915), Chap. iii.

cratic parties; and observers had sometimes thought that they detected signs of its development. But the Imperial government was always able to do business without for a moment admitting the right of the Reichstag to unseat the Chancellor or any of his subordinates by an adverse vote. The Chancellor might, of course, be criticized, and the proposals which he introduced might be defeated; expediency might even require his removal by his Imperial master; but he never felt obliged to retire merely by reason of lack of support in the legislative chamber, as would a British or a French minister similarly situated. This does not mean that the defeat of a government measure might not tend to produce the practical effect of a parliamentary vote of "want of confidence." It means simply that the Chancellor, in such a case, was under no admitted obligation to resign. The retirement of Chancellor von Bülow in 1909 was more nearly involuntary than that of any of his three predecessors; but persons most conversant with the circumstances agree that it was intended to involve no acknowledgment of responsibility to the nation's elected representatives. The situation was simply one in which legislation had become impossible because the Chancellor was unwilling to enter into a compromise with the Conservative-Clerical majority in the Reichstag on his proposed taxation of inheritances and other financial reforms.[1]

The Bundesrath: Origins and Composition. — If the chancellorship was without a counterpart among modern governments, no less so was the Federal Council, or Bundesrath. No feature of the German political system was more extraordinary; none, as one writer has observed, was more thoroughly native.[2] The Bundesrath was not an "upper house," nor even, in the ordinary sense, a deliberative chamber at all. On the contrary, it was the central institution of the whole Imperial system, and as such it was endowed with a broad combination of functions which were not only legislative, but administrative, consultative, judicial, and diplomatic.

The Bundesrath was composed of delegates appointed by the princes of the monarchical states and by the senates of the free

[1] On the status and functions of the Chancellor see Howard, *German Empire*, Chap. vii; Krüger, *Government and Politics of the German Empire*, Chap. viii; Laband, *Das Staatsrecht des deutschen Reiches*, § 40; Dupriez, *Les ministres*, I, 483-548; Hensel, "Die Stellung des Reichskanzlers nach dem Staatsrechte des deutschen Reiches," in Hirth, *Ann. des deutschen Reiches*, 1882; M. I. Tambaro, "La transformation des pouvoirs en Allemagne," in *Rev. du Droit Public*, July–Sept., 1910.

[2] Lowell, *Governments and Parties*, I, 259.

cities. The original Imperial constitution required that the fifty-eight votes to which the twenty-five states of the Confederation were entitled should be distributed in such a manner that Prussia would have seventeen, Bavaria six, Saxony four, Württemberg four, Baden three, Hesse three, Mecklenburg-Schwerin two, Brunswick two, and the seventeen other states one apiece. Save for the increase of the Bavarian quota from four to six, and of the Prussian from four to seventeen, these numbers were simply carried over from the Diet of the Confederation of 1815. The Prussian increase arose, in 1866, from the absorption of Hanover, Hesse-Cassel, Holstein-Lauenburg, Nassau, and Frankfort; the Bavarian, from a customs union treaty of July 8, 1867. Subsequent to the adoption of the constitution of 1871 Prussia acquired, by contract, the vote of the government of Waldeck; also, through the establishment in 1884–85 of a perpetual Prussian regency in Brunswick, the two votes to which that state was entitled; so that the total of the votes controlled by the government of Prussia was raised, for all practical purposes, to twenty. Under the Alsace-Lorraine Constitution Act passed in 1911 the *Reichsland* became entitled to three votes in the Bundesrath, bringing up the total to sixty-one. These three votes were cast by delegates appointed by the *Statthalter*, or governor, of the territory; and since he was appointed by the Emperor, the votes would normally be subject to control by Prussia. The law provided, however, that the Alsatian votes should not be counted in favor of Prussia unless she would have a majority without them, and that they should in no case be counted upon constitutional amendments or in case of a tie.

It may be observed that the allotment of votes for which provision was made in the constitution of 1867–71 was largely arbitrary. That is to say, except for the quotas of Prussia and Bavaria, it was carried over from the constitution of 1815, with no attempt to apportion voting power among the several states in exact relation to population, wealth, or importance. Upon any one of these bases Prussia must have been given an absolute majority, rather than a scant third. In 1867 the population of Prussia was four fifths of that of the North German Confederation; in 1871, two thirds of that of the Empire. The arrangement by which Prussia intrusted to the minor states a total of forty-one votes, while she retained only seventeen, was designed by Bismarck as a means of disabusing those states of the idea that they stood in danger of Prussian domination. At the same time, an absolute control over the amending of the Imperial constitu-

tion, arising from the rule already explained,[1] safeguarded essential Prussian interests.

The Bundesrath: Organization and Procedure. — Every state of the Empire was authorized, although not required, to send to the Bundesrath a number of delegates identical with the number of votes to which it was entitled. The full quota of members was therefore sixty-one. Legally, and to a large extent practically, the status of the delegate was that, not of a senator, but of a diplomat; and the Emperor was required to extend to the members of the body the "customary diplomatic protection."[2] Delegates were usually officials (frequently ministers) of the states which they represented. By custom, they were in earlier times appointed afresh for each session, but for years before the Great War the body was almost continuously in session; so that new appointments were made whenever the state government desired. Members could be recalled or replaced at any time. The purely federal character of the Bundesrath was farther emphasized by two principal facts. The delegates spoke and acted and voted, not at their own discretion, but under specific instructions of the governing authorities by whom they were accredited. Only rarely did their instructions allow them any considerable measure of independence. Strictly, the Bundesrath was not a deliberative assembly at all; although, unlike the former Diet, it was something more than a meeting of ambassadors of the states. In the second place, the votes cast were the votes, not of the individual members, but of the states, and they were cast in indivisible blocks by the delegations of the states, regardless of the number of members in attendance. Thus, Bavaria was entitled to six votes. Whatever the individual opinions of the six Bavarian delegates, the six Bavarian votes were cast solidly upon any question that might arise. It was not necessary that six delegates actually participate in the decision; indeed, the decision, if the matter was an important one, was likely to be dictated by the home government and not formulated by the delegates at all. A single delegate might cast the entire quota of votes to which his state was entitled. The twenty votes controlled by Prussia were therefore always cast in a block, from which it followed that the Prussian will usually prevailed in the chamber. On several occasions the smaller states were able to combine in sufficient numbers to defeat a project upon which Prussia was bent, but such an action was exceptional.

[1] See p. 621.

[2] Art. 10. Dodd, *Modern Constitutions*, I, 330.

The Bundesrath could be convened by the Emperor, which in effect meant by the Chancellor, at any time. Practically, as has been said, it was in session continuously. The Chancellor presided, except when he designated some other member to act in his stead. Every member of the Confederation, *i.e.*, every state, had a right to make motions and bring in measures. The Emperor, as such, was debarred from introducing proposals. But as king of Prussia he could bring forward any project through the medium of the Prussian delegation; and in actual practice it was not always deemed necessary to resort to this subterfuge. The body invariably sat behind closed doors; and although ordinarily upon the conclusion of a sitting a statement regarding the proceedings was given to the press, the members might decide to withhold such information altogether. With a few exceptions, a simple majority of the sixty-one votes was sufficient for the adoption of a measure. In the event of a tie, the Prussian delegation had the deciding voice. The principal limitations upon decisions by simple majority were: (1) any proposal to amend the constitution could be rejected by as few as fourteen votes, whence, as has been explained, it arose that Prussia had an absolute veto on amendments; and (2) when there was a division upon proposed legislation relating to military affairs, the navy, the tariff, and various consumption taxes, the vote of Prussia prevailed if it was cast in favor of maintaining the *status quo*.[1]

The work of the Bundesrath consisted largely in the preparation of measures for the consideration of the Reichstag, and a considerable share of its labor was performed in committees. Of permanent committees there were twelve — eight provided for in the constitution and four existing by virtue of standing orders. The committees required by the constitution were those on the army and fortifications; marine; customs and taxes; commerce and trade; railroads, posts, and telegraphs; judicial affairs; accounts; and foreign relations. Committees were made up for a year at a time. Under certain limitations they were chosen by the Bundesrath itself, by secret ballot; except that the Emperor appointed the members of the committee on the marine and all but one of the members of the committee on the army and fortifications. Strictly, however, the Bundesrath merely decided by ballot the states which should be represented on each committee, leaving to the states themselves the right to name their representatives. All permanent committees consisted of seven members, save that on the marine, which had five;

[1] Art. 5. Dodd, *Modern Constitutions*, I, 328.

and each included representatives of at least five states. Prussia held all chairmanships except that of the committee on foreign affairs, which belonged to Bavaria.

The Bundesrath: Functions and Powers. — The pivotal position which the Bundesrath occupied in the German constitutional system meant that the functions of the body were fundamental and its powers comprehensive. Its work was in the main legislative and fiscal, but also in part executive and judicial. The constitution stipulated that the legislative power of the Empire should be exercised by the Bundesrath and the Reichstag, and that a majority of the votes of both bodies should be necessary and sufficient for the enactment of a law. The right of initiating legislation was expressly conferred upon the Reichstag, but in practice it was exercised almost exclusively by the Bundesrath. Even finance bills regularly originated in the superior body. Under normal procedure, bills were prepared, discussed, and voted in the Bundesrath, submitted to the Reichstag for consideration and acceptance, and returned for farther scrutiny by the Bundesrath before their promulgation by the Emperor. In any case, the final approval of a measure must take place in the Bundesrath. Speaking broadly, the Bundesrath made law, with merely the assent of the Reichstag.

The Bundesrath's executive functions represented a curious admixture, but the sum total was considerable. In the first place, the body had supplementary administrative powers. The constitution required it to take action upon " the general administrative provisions and arrangements necessary for the execution of the Imperial laws, so far as no other provision is made by law," as well as upon " the defects which may be discovered in the execution of the Imperial laws."[1] This function was performed through ordinances so devised as not to contravene the constitution, existing law, or the proper prerogatives of any constituted authority, Imperial or state. In the second place, certain powers vested in the Emperor could be exercised only with the Bundesrath's consent. Most important of these were: (1) declaring war, save in the event of an attack upon the territory or coasts of the Empire; (2) concluding treaties, in so far as they related to matters falling within the range of Imperial legislation; and (3) carrying out an " execution " against a delinquent state. Finally, certain relations were maintained with the Reichstag which involved the exercise of authority that was essentially executive. With the assent of the Emperor, the Bundesrath might dissolve

[1] Art. 7. Dodd, *Modern Constitutions*, I, 329.

the popular chamber; and every member of the Bundesrath had a right to appear in the Reichstag and to be heard there at any time upon his own request, somewhat after the manner of a minister in a parliamentary government. It should be observed, however, that the members of the Bundesrath were authorized to appear in the Reichstag, not for the purpose of advocating a measure which the Bundesrath had enacted, or would be willing to enact, but simply to voice the interests or demands of their own states. Large functions in connection with public finance, likewise, were vested in the body. It prepared the annual budget, audited the accounts which the Empire carried with the states, and maintained important supervisory relations with the Imperial Bank, the Imperial Debt Commission, and other fiscal agencies. Lastly, it participated in the power of appointment; for although that power, as such, was vested in the Emperor, officials of some kinds, *e.g.*, judges of the Imperial Court, were actually chosen by the Bundesrath, and in many other instances the body preserved an acknowledged right to approve appointments made.

In its judicial capacity the Bundesrath sat as a supreme court of appeal, to which cases might be carried from the tribunals of a state when it could be shown that justice was not to be had in those tribunals. It served also as a court of last resort for the settlement of disputes between the Imperial government and a state; or between two states, when the point at issue was not a matter of private law and when a definite request for action was made by one of the parties. Finally, in disputes relating to constitutional questions in states whose constitution did not designate an authority for the settlement of such differences, the Bundesrath was required, at the request of one of the parties, to effect an amicable adjustment; or, if this proved impossible, to see to it that the issue was settled by Imperial law.

Such an aggregate of powers made the Bundesrath easily the dominating element in the Imperial government, second, in law at all events, not even to the Emperor himself. Defenders of the former German system have long been accustomed to argue that, since the body was largely composed of ministers and other officials of the various states, it was the most experienced and efficient legislative chamber in the world; and they insisted that it was not reactionary or unduly conservative. There is, however, no disguising the fact that the members were appointed by monarchs or aristocratic senates, that they were the spokesmen of these non-popular authorities and were in all respects

controlled by them, and that the body was the bulwark of the forces that have always been opposed to change. An absolute condition of the establishment of democratic government in the country was the abolition of the Bundesrath, or a complete transformation of it in both composition and powers.[1]

The Reichstag: Composition and Electoral System. — In contrast with the Bundesrath, which was organized on a purely federal basis, the Reichstag was broadly national. It represented not the states, nor yet the people of the states, but the people of the Empire as a whole. From what has been said concerning the elements of autocracy and bureaucracy in the German system it follows that there was no room in that system for a parliamentary chamber of the nature of the British House of Commons or of the French Chamber of Deputies. None the less, restricted as were its functions, the Reichstag was one of the world's most interesting legislative bodies; and, being the one democratic element known to the Imperial constitution, it had peculiar importance as the basis upon which any new and popular scheme of government would have to be built.

Under provision of the constitution, members of the Reichstag were chosen for a term of five years,[2] by direct and secret ballot, at an election which took place on a given day throughout the entire Empire. The number of seats, fixed by the constitution of 1871 at 382, was, by law of June 25, 1873, providing for the election of fifteen members from Alsace-Lorraine, increased to 397; and it subsequently stood unchanged. The electoral "circles," or districts, each of which returned one member, were laid out originally in such a manner as to contain 100,000 inhabitants each, and also in such a way that no district embraced portions of two or more states. Prussia was allotted 235 members, Bavaria 48, Saxony 23, and other states smaller numbers, eleven having only one member each. The election law of May 31, 1869, provided that arrangements for redistributions of seats in accordance with changes of population should be made by future laws. But no such legislation was ever enacted, and no reapportionment took place after 1871. The development of Ger-

[1] On the Bundesrath see Krüger, *Government and Politics of the German Empire*, Chap. vi; Howard, *German Empire*, Chap. iv; J. H. Robinson, "The German Bundesrath," in *Pub. of Univ. of Pa.*, III (Philadelphia, 1891); Laband, *Das Staatsrecht des deutschen Reiches*, §§ 27–31; Lebon, *Études sur l'Allemagne politique*, 137–151; Dupriez, *Les ministres*, I, 505–523; Zorn, *Das Staatsrecht des deutschen Reiches*, I, 136–160; E. Kliemke, *Die Staatsrechtliche Natur und Stellung des Bundesrathes* (Berlin, 1894); A. Herwegen, *Reichsverfassung und Bundesrat* (Cologne, 1902).

[2] The term was changed from three years to five in 1888.

many as a great industrial and commercial nation fell mainly within this period, resulting in enormous shifts of population from one part of the country to another, and especially from rural localities to the towns. The result was the grossest inequality of electoral constituencies to be found anywhere in the world. In the rural province of East Prussia, shortly before the Great War, the average number of voters in a district was 121,000; in Berlin it was 345,000. Twelve of the most populous districts represented in the Reichstag contained 1,950,000 voters; twelve of the least populous, 170,000. The district of Schaumburg-Lippe had but 9891. There had long been urgent demand for a reapportionment. But the Imperial authorities firmly held out against it, urging with all possible force that representation ought to be by *interests*, rather than by mere numbers, and that the existing distribution was, measured in this way, entirely satisfactory. The real reason for this obstructionist attitude is not difficult to discover: any change would mean a doubling or tripling of deputies returned by urban constituencies, with the effect of greatly increasing the already fast growing quota of Socialist and other radical members.

The suffrage, however, was reasonably democratic. Male citizens twenty-five years of age and upwards, and duly registered, were entitled to vote in the district in which they resided; the only classes disqualified were persons under guardianship, bankrupts, beneficiaries of public charity, persons suffering judicial deprivation of certain of their rights as citizens, and persons in active service in the army and navy. There was no plural voting. Any qualified voter who had been a citizen of any one of the states for one year might be elected. Electoral procedure was regulated by the election law of 1869, amended in minor particulars at later dates, and extended in 1871 and 1873 to the southern states and to Alsace-Lorraine respectively. Elections were held uniformly throughout the Empire on a day fixed by Imperial ordinance. In the event of a dissolution before the end of the five-year term, an election was required to be held within a period of sixty days, and a new Reichstag must be convened not less than ninety days after the dissolution. Each constituency was divided into districts, and in each district the lists of qualified voters had to be made up and deposited for public inspection at least four weeks before the election. Secrecy of the ballot was specially safeguarded by regulations enacted in 1903. Each voter, upon appearing at the polls, was furnished with an envelope and a white voting-paper bearing an official stamp. In

a compartment arranged for the purpose in the polling room he marked his ballot and inclosed it in the envelope. As he left the room he handed the envelope to the presiding officer or deposited it in a voting urn. The election board consisted of this presiding officer, his deputy, a secretary, and three to six assistants, all of whom were unpaid. Polling continued from 10 A.M. to 7 P.M., after which the board counted the votes; and the results, together with all the ballots and other documents, were sent to the election commissioners of the constituency, who were appointed by the local administrative authorities. For election on the first ballot an absolute majority of the votes cast in the district was required. If no candidate obtained such a majority, a second balloting (*Stichwahl*) followed a fortnight later, when a choice was made, not as in France among all candidates who cared to remain in or to enter the race, but between the two who upon the first occasion polled the largest number of votes. In the rare event of a tie, decision was by lot. On account of the division of the voters in most constituencies among several parties, many second ballotings were required. In 1907 the number was 158; in 1912, 191. In forty per cent of the cases the candidate originally receiving a plurality finally failed to be elected; and the system usually worked out to the advantage of the conservative and moderate parties, and hence to the disadvantage of the Socialists.[1]

The Reichstag: Organization and Procedure. — The constitution provided that the Reichstag should meet at least once each year, and that it should never be in session when the Bundesrath was not; otherwise the Imperial authorities were free to convoke sessions at will. The summons was issued by the Emperor, and sessions were opened by him, in person or by proxy, with much ceremony. He could prorogue the body for a period of thirty days without its consent, and with the assent of the Bundesrath he could also dissolve it. Attendance at the meetings was always scant. An Alsatian deputy who took his seat in 1898 says that ordinarily at that time barely sixty of the members, or less than one sixth, would be found in their places;[2] many appeared

[1] See A. N. Holcombe, "Direct Primaries and the Second Ballot," in *Am. Polit. Sci. Rev.*, Nov., 1911. General references on the Imperial electoral system include Krüger, *Government and Politics of the German Empire*, Chap. v; Howard, *German Empire*, Chap. v; Lebon, *Études sur l'Allemagne politique*, 70–83; *ibid.*, "Étude sur la législation électorale de l'empire d'Allemagne," in *Bull. de Légis. Comp.*, 1879; G. Below, *Das parlamentarische Wahlrecht in Deutschland* (Berlin, 1909); and M. H. Nézard, "L'Évolution du suffrage universel en Prusse et dans l'Empire allemand," in *Rev. du Droit Pub.*, Oct.–Dec., 1904.

[2] A. Wetterlé, *Behind the Scenes in the Reichstag*, trans. by G. F. Lees (New York, 1918), 38.

at Berlin only at times of unusual political stress. One explanation, no doubt, was the assembly's powerlessness. But another was the meager compensation allowed. Bismarck opposed remuneration of any sort, and the Imperial constitution originally provided that members should, as such, "draw no salary or compensation." They were to be allowed to travel free on the railroads between their residences and Berlin. But that was all; and when the Socialist organizations began raising funds for the support of Socialist members, the Imperial Court of Appeal ruled that such action was illegal.[1] Early in the present century, however, attendance became so slender that it was often difficult or impossible to raise a quorum, and in 1906 Chancellor von Bülow grudgingly agreed to meet the situation by providing for salaries to be paid out of the Imperial treasury. The salary established — 3000 marks ($750) a year — was, however, only one tenth of the amount paid senators and representatives in the United States, and it had only a moderate effect in the desired direction.

The Reichstag regulated its own procedure and discipline, and elected its own officers, consisting of a president, two vice-presidents, and eight secretaries. Under standing orders adopted in 1876, the president and the vice-presidents were chosen at the opening of the first session following a general election for a temporary term of four weeks, and upon the expiration of this period an election took place for the remainder of the session. At the opening of each succeeding session an election of these officials for the session took place at once. The secretaries were chosen at the beginning of each session for the entire session. All of these officers were regularly elected from the party coalition which at the time commanded a majority. In 1912 the Socialists succeeded for the first time in capturing a vice presidency. At the opening of a session the entire membership was divided by lot into seven *Abtheilungen*, or bureaus, as nearly equal as it was possible to make them. The bureaus of the French Chamber of Deputies are made up afresh once a month, and those of the Italian once in two months, but those of the Reichstag remained unchanged throughout a session, unless upon motion of as many as fifty members the body decided upon a fresh distribution. The functions of the bureaus were, as in other continental countries, mainly the validation of credentials of members of the chamber and the selection of members of committees. The Reichstag had but one standing committee — that on elections. All others

[1] Cf. the Osborne Judgment of 1909 in England (see p. 174).

were made up, as occasion required, by the appointment by ballot of an equal number of members by each of the seven bureaus; although, in point of fact, the preparation of committee lists fell largely to the party leaders of the chamber. The function of committees was to give preliminary consideration to measures, and to report them, and evidence relating to them, to the chamber. Bills were not, however, in all cases referred to committees.

The hall in which the Reichstag carried on its deliberations is semi-circular, and the members were seated in the manner customary in continental legislatures,with the conservative elements on the right and the radical groups on the left of the presiding officer. Front benches, at both left and right, were reserved for members of the Bundesrath; for all these, including of course the Chancellor, had a right to appear and speak, although technically only as delegates of their particular governments. Debaters addressed the chamber from the platform in front of the president's chair or from their seats as they chose; and they spoke whenever they could secure the recognition of the presiding official, not, as in France, in the hard and fast order indicated by a previously prepared written list. Like the Speaker of the House of Commons, the president of the Reichstag was supposed to be a strictly non-partisan moderator. A fixed tradition of the office was that during debate the chair should alternately recognize the supporters and the opponents of the measure under consideration. As a general rule, closure of debate could be ordered upon the motion of thirty members.

Unlike the sittings of the Bundesrath, which always took place behind closed doors, those of the Reichstag were, by constitutional provision, public. Under the standing orders, however, the body could go into secret session, on motion of the president, or of ten members. Publicity was farther assured by the constitutional stipulation that no one should be "held responsible for truthful reports of the proceedings of the public sessions of the Reichstag."

The Reichstag: Powers and Actual Character. — Enough has been said about the Bundesrath to make it clear that that body was no ordinary senate or upper chamber. Indeed it was no upper chamber at all; for the Imperial government was not so organized as to provide for a bicameral parliament of the British or the French type. Rather, the Empire had essentially a unicameral parliament, consisting of the Reichstag — this parliament, however, working under the leadership and check of a

semi-legislative, semi-executive body, the Bundesrath, which had absolutely no counterpart in any other European country. On the face of things, the Reichstag was a body with extensive authority; the legislative power of the Empire was expressly vested by the constitution in the Reichstag and the Bundesrath, and a majority vote in both assemblages was necessary for the enactment of laws, for the adoption of constitutional amendments, and for the ratification of every treaty touching matters "within the domain of Imperial legislation." In point of fact, however, the functions of the chamber were purely subordinate, and its influence upon the conduct of public affairs was almost negligible.

The reasons are not far to seek. In the first place, partly by law and partly by custom, the initiative in legislation lay with the Bundesrath. A chief duty of that body, under the terms of the constitution, was indeed to prepare measures for the consideration of the popular chamber. Resolutions might originate in the Reichstag, and, after being passed there, go to the Bundesrath for examination. But few important proposals actually started in this way, and even the great pieces of finance legislation were formulated in the federal chamber. The Reichstag could hold up legislation, or even the budget, while it debated and criticized the Bundesrath's bill or the policies of the government. But if its obstructiveness was carried too far, there were clubs that could be swung over its head, the most generally effective being the threat of dissolution. The power of dissolution was exercised several times with the main, or sole, purpose of putting an end to opposition; and it is to be observed that the power was wielded without a shred of the ministerial responsibility which is its very basis in England and France.

In the second place, the Reichstag was wholly without means of calling the executive authorities to account. As has been emphasized, neither the Chancellor nor the ministers recognized any responsibility to the popular chamber for their acts. The standing orders solemnly provided for interpellation. But the right was utterly hollow. There were no ministerial officers to whom an interpellation could be directly addressed except the Chancellor, and he usually showed his contempt for the whole proceeding by absenting himself on the days set apart for the purpose. In 1911 Chancellor von Bethmann Hollweg agreed to a change of the rule so as to permit a vote of approbation or censure to follow an interpellatory debate. The Radicals thought they had scored a victory; but they soon discovered that no matter how the vote went, nothing whatever happened. "Put

me in a minority, if it so please you," the Chancellor continued to say; "I shall remain all the same at my post as long as I retain the confidence of my sovereign."[1]

Such dumb-show of governmental activity could hardly have gone on for decades without affecting the proceedings, and even the personnel, of the body in undesirable ways. The effect upon the conduct of business was to crush out honest and fruitful initiative and wholesome effort to promote the public welfare, and to substitute either an attitude of discouragement and apathy or a disposition to grovel and barter for favors, according to the moral fiber of the individual or the group. A few leaders, the spokesmen of their parties, did all the work; the mass of the members voted to order, often without even studying the bills. The reports of committees were short, dry analyses, usually actually written by government officials and merely signed by the elected chairmen. "Above all," once said a cynical, but shrewd and experienced, Clerical member to a newcomer to whom he had taken a fancy, "attach no importance to the noisy declarations and tragic gestures of speakers on the first reading of a bill. All the work of the Reichstag is done behind the scenes. Our party leaders are augurs who have learned to look at each other in public assembly without laughing; but, surrounded by the mystery of their private counsels, they are hand and glove together. I know it because I am one of them. Everything is compromise with us. We set up a noisy opposition only to obtain privileges. . . . All [the leaders] are in continuous relations with the Wilhelmstrasse, which knows their ambitions and how to play with them skillfully. People abroad believe that we possess a national representation. But we have only a handful of operetta conspirators, whom an enlightened stage-manager directs as he thinks fit. With us, such big words as ministerial responsibility, liberty, and democracy have no meaning."[2]

There is a certain amount of exaggeration in this, yet it lays bare an aspect of German parliamentary life which explains many otherwise inexplicable acts of servility on the part of the Reichstag under the aggressive, imperialistic régime of William II. It is generally agreed, too, that the level of education and ability of the members was in later years lower than in the early history of the Empire. In 1914 it might indeed be said that, outside of the Social Democratic group, there was not a single member of the Reichstag who carried political weight and authority beyond

[1] Wetterlé, *Behind the Scenes in the Reichstag*, 182.
[2] *Ibid.*, 84–85.

the narrow circle of his own political adherents. Writers of German extraction have sought to explain the decline by saying that after the great national problem of unification was solved "the detail work of legislation with all its petty struggles began," parties lost their national character and became the representatives of special economic and social classes, and men of statesmanlike qualities and high ideals turned away in disgust, leaving the seats in the Reichstag to average politicians, or worse.[1] Another explanation given is that the increase of the Socialist quota meant the influx of large numbers of members of limited education and narrow vision. These views are, to a degree, plausible. Yet the citizen of a democratic country cannot repress the feeling that the fundamental difficulty lay in the rigid restrictions which of themselves were sufficient to reduce a promising parliamentary assemblage to a mere "debating society," a great legislative chamber to a "Hall of Echoes."[2]

The Codes of Law. — On the subject of the administration of justice the Imperial constitution of 1871 contained but a single clause, which vested in the Empire power of "general legislation concerning the law of obligations, criminal law, commercial law and commercial paper, and judicial procedure." An amendment adopted in 1873 modified the clause to read, "general legislation as to the whole domain of civil and criminal law and of judicial procedure."[3] Each of the federated states has always had its own judicial system, and justice is administered almost exclusively in courts that belong to the states. These courts, however, have been declared to be also courts of the Empire, or present Commonwealth; and, to the end that they may be systematized, and that conditions of justice may be made uniform throughout the land, the federal government has not hesitated to avail itself of the regulative powers conferred in 1871 and amplified in 1873. In the first place, the past gen-

[1] Krüger, *Government and Politics of the German Empire*, 50–60. In his *Imperial Germany* Prince von Bülow sets forth the view that the Germans are deficient in practical political sense, and implies that it is impossible to intrust to the people the management of their public affairs (pp. 139–162).

[2] On the Reichstag see Krüger, *Government and Politics of the German Empire*, Chap. v; Howard, *German Empire*, Chap. v; Lebon, "Le Reichstag allemand," in *Ann. de l'École Libre des Sci. Polit.*, April, 1889; *ibid.*, *Études sur l'Allemagne politique*, Chap. ii; Laband, *Das Staatsrecht des deutschen Reiches*, §§ 32–38; H. Robalsky, *Der deutsche Reichstag* (Berlin, 1897); G. Leser, *Untersuchungen über das Wahlprüfungsrecht des deutschen Reichstags* (Leipzig, 1908). There is a full discussion of German methods of legislation in Laband, *op. cit.*, §§ 54–59.

[3] Art. 4. Dodd, *Modern Constitutions*, I, 328.

eration has witnessed a unification of German law worthy of comparison with the systematization of the law of France, accomplished through the *Code Napoléon.*[1] In 1871 the Empire contained more than two score districts of which each possessed a distinct body of civil and criminal law; and, to add to the confusion, the boundaries of these districts, although at one time identical with the limits of the various political divisions of the country, were no longer so. The case of Prussia was typical. In 1871 the older Prussian provinces were living under a Prussian code promulgated in 1794; the Rhenish provinces held to the *Code Napoléon;* in the Pomeranian districts there were large survivals of Swedish law; while the territories acquired after the war of 1866 had each its indigenous legal system. Only two German states in 1871 had a fairly uniform body of law. Baden had adopted a German version of the *Code Napoléon,* and Saxony, in 1865, had put in operation a code of her own devising. At no period of German history had there been either effective lawmaking or legal codification which was applicable to the whole of the territory contained within the Empire.

German legal reform since 1871 has consisted principally in the formation and adoption of successive codes, each aimed at substantial completeness within a given branch of law. The task had been begun, indeed, before 1871. As early as 1861 the states had agreed upon a code relating to trade and banking, and this code had been readopted, in 1869, by the North German Confederation. In 1869 a code of criminal law had been worked out for the Confederation, and in 1870 a code relating to manufactures and labor. Upon the establishment of the Empire, in 1871, a commission was created to draw up regulations for civil procedure and for criminal procedure, and also a plan for the reorganization of the courts. Beginning with a scheme of civil procedure, published in December, 1872, the commission brought in an elaborate project upon each of the three subjects. The Code of Civil Procedure, which introduced many important reforms in the interest of publicity and speed, was well received. That relating to criminal procedure, proposing as it did to abolish throughout the Empire trial by jury, was, however, vigorously opposed, and the upshot was that all three reports were referred to a new commission, which completely remodeled the original projects relating to criminal procedure and to the organization of the courts. In the end the revised projects were adopted. On October 1, 1879, a group of fundamental laws went into effect

[1] See p. 450.

under which the administration of justice throughout the entire country has been controlled to the present day. The most important of these was the *Gerichtsverfassungsgesetz*, or Law of Judicial Organization, enacted January 27, 1877; the *Civilprozessordnung*, or Code of Civil Procedure, of January 30, 1877; and the *Strafprozessordnung*, or Code of Criminal Procedure, of February 1, 1877. It remained only to effect a codification of the civil law. A committee set up for this purpose completed its work in 1887, and the draft which it submitted was placed for revision in the hands of a new commission, which reported in 1895. In an amended form, the Civil Code was approved by the Reichstag, August 18, 1896; and it was put in operation January 1, 1900. Excluding matters pertaining to land tenure (which are left to be regulated by the states), the Code deals not only with all of the usual subjects of civil law, but also with subjects arising from the contact of private law and public law.[1]

The Courts. — These and other unifying measures brought it about that throughout the Empire justice was administered in tribunals whose officials were appointed by the local governments, and which rendered decisions in their name, but whose organization, powers, and rules of procedure were regulated minutely by federal law; and the system has undergone no important change since the proclamation of the republic in 1918. The hierarchy of tribunals provided for in the Law of Judicial Organization comprises courts of four grades. At the bottom are the *Amtsgerichte*, of which there are approximately two thousand in the country. These are courts of first instance, consisting ordinarily of but a single judge. In civil cases their jurisdiction extends to the sum of six hundred marks; in criminal, to matters involving a fine of not more than six hundred marks or imprisonment of not over three months. In criminal cases the judge sits with two *Schöffen*, or jurors, selected by lot from the jury lists. Besides litigious business, the *Amtsgerichte* have charge of the registration of land titles, wills, guardianship, and other local interests.

Next above the *Amtsgerichte* are the district courts, or *Landgerichte* (173 in 1914), each composed of a president and a variable number of associate judges. Each *Landgericht* is divided into a civil and a criminal chamber. There may, indeed, be other cham-

[1] For a brief account of the development of German law see Krüger, *Government and Politics of the German Empire*, 183–191. The best treatise on the Civil Code is E. J. Schuster, *Principles of the German Civil Law* (Oxford, 1907). C. H. Wang [ed.], *The German Civil Code* (London, 1907), is a scholarly translation of the Code into English. An excellent critical study and bibliography is E. M. Borchard, *Guide to the Law and Legal Literature of Germany* (Washington, 1912).

bers, as for example a *Kammer für Handelssachen*, or chamber for commercial cases. The president presides over a full bench; a director over each chamber. The *Landgericht* exercises a revisory jurisdiction over judgments of the *Amtsgericht*, and possesses a more extended original jurisdiction in both civil and criminal matters. The criminal chamber, consisting of five judges (of whom four are necessary to convict), is competent, for example, to try cases of felony punishable with imprisonment for a term not exceeding five years. For the trial of many sorts of criminal cases there are special *Schwurgerichte*, or jury courts, which sit under the presidency of three judges of the *Landgericht*. A jury consists of twelve members, of whom eight are necessary to convict. Still above the *Landgerichte* are the *Oberlandesgerichte*, of which in 1914 there were twenty-nine, each consisting of seven judges. The *Oberlandesgerichte* are largely courts of appellate jurisdiction. Each is divided into a civil and a criminal senate. There is a president of the full court and a similar official for each senate.

At the apex of the system stands the *Reichsgericht* (created by law of October 1, 1879), which, apart from certain administrative, military, and consular courts, is the only German tribunal of a strictly national character.[1] It exercises original jurisdiction in treason cases and hears appeals from the consular courts and from the state courts on questions of national law. Its members, ninety-two in number, were formerly appointed by the Emperor for life, on nomination of the Bundesrath, and they are organized in six civil and four criminal senates. Sittings are held at Leipzig, in Saxony.

All judges in the courts of the states are appointed by the authorities of the respective states. The national law prescribes minimum qualifications based on professional study and experience, the state being left free to impose any additional qualifications that it may desire. All judges are appointed for life, and all receive salaries which may not be reduced during their tenure; and there are important guarantees against arbitrary transfer from one position to another, as well as other practices that might diminish the judge's impartiality and independence.[2]

[1] The republican constitution of 1919 says (Art. 108): "In accordance with a national law a Supreme Judicial Court will be established for the German Commonwealth." See p. 731.

[2] On the German judicial system see Krüger, *Government and Politics of the German Empire*, 191–204; Howard, *German Empire*, Chap. ix; Laband, *Das Staatsrecht des deutschen Reiches*, §§ 83–94; J. W. Garner, "The German Judiciary," in *Polit. Sci. Quar.*, Sept., 1902, and Sept., 1903; J. Hirschfield, "German Courts at Work," in *Jour. Soc. Comp. Legis.*, New Series, No. xxv.

CHAPTER XXXVI

THE PRUSSIAN GOVERNMENT BEFORE THE GREAT WAR

Preponderance of Prussia in the Empire. — Germany on the eve of the Great War was a federal empire composed of twenty-five states, besides an Imperial territory which had certain attributes of statehood, *i.e.*, Alsace-Lorraine. Three of these states — the old free cities of Bremen, Hamburg, and Lübeck — were aristocratic republics; all the others were monarchies. The latter included the four kingdoms of Prussia, Bavaria, Saxony, and Württemberg; the six grand-duchies of Baden, Hesse, Mecklenburg-Schwerin, Mecklenburg-Strelitz, Oldenburg, and Saxe-Weimar; the five duchies of Anhalt, Brunswick, Saxe-Altenburg, Saxe-Coburg-Gotha, and Saxe-Meiningen; and the seven principalities of Lippe, Schwarzburg-Rudolstadt, Schwarzburg-Sonderhausen, Schaumburg-Lippe, Reuss Älterer Linie, Reuss Jüngerer Linie, and Waldeck-Pyrmont.[1]

Easily the most striking feature of the Empire's political organization and life was the dominance exercised by one of the states, Prussia, over all the others, and therefore over the affairs of the Empire itself. This dominance flowed from a variety of circumstances. First, there was the historical fact that Prussia was the organizer of German unity and the creator of the Empire. Second, Prussia physically overshadowed the sister states. Her area in 1914 was 134,616 square miles; that of the remainder of

[1] The best survey in English of the governments of the German states is Lowell, *Governments and Parties*, I, Chap. vi. Fuller and more recent is G. Combes de Lestrade, *Les monarchies de l'empire allemand* (Paris, 1904). The most elaborate treatment of the subject is to be found in an excellent series of studies edited by H. von Marquardsen and M. von Seydel under the title *Handbuch des Oeffentlichen Rechts der Gegenwart, in Monographien* (Freiburg and Tübingen, 1883–1900). A new series of monographs, comprising practically a revision of this collection, was in course of publication shortly before the Great War by J. C. B. Mohr at Tübingen. The texts of the various constitutions are printed in F. Stoerk, *Handbuch der deutschen Verfassungen* (Leipzig, 1884). The government of Alsace-Lorraine under the German régime is briefly described in Krüger, *Government and Politics of the German Empire*, Chap. xv; Ogg, *Governments of Europe* (1st ed.), 282–287, and Howard, *German Empire*, Chap. x. Excellent full accounts are C. D. Hazen, *Alsace-Lorraine under German Rule* (New York, 1917), and B. Cerf, *Alsace-Lorraine since 1870* (New York, 1919).

the Empire was 74,164 square miles. Her population in 1911 was 40,163,333; that of the remainder of the Empire was 24,740,090. Third, Prussia enjoyed, as has been pointed out, peculiar political rights under the Imperial constitution. Her king was *ipso facto* Emperor; the chairman of every standing committee in the Bundesrath, except that on foreign affairs, was a Prussian; all changes in the army, the navy, or the system of taxation must have Prussia's assent; her seventeen votes in the Bundesrath were sufficient to defeat any constitutional amendment. Fourth, on the basis of interstate agreements, Prussia had substantial control of the armed forces of twenty-one of the states, together with an undefined power of inspection over the others. Finally, Prussia had in the Hohenzollern dynasty a ruling family of exceptional energy and ambition, and the Prussian people were somewhat more easily led along paths of aggression in both German and international politics than were their Bavarian or Württemberger neighbors.

The result of all this was that Prussia rapidly advanced after 1871 from mere leadership to almost unlimited control. She became, for all practical purposes, Germany. As a recent writer remarks, "The Fatherland was not formed by the absorption of Prussia into Germany, but by the absorption of Germany into Prussia; the part swallowed the whole." The political condition of the German Empire and the rôle formerly played by Germany in world affairs cannot, therefore, be understood without some knowledge of Prussian governmental organization, methods, and spirit; just as the future political development of the German-speaking portions of Europe will be comprehensible only when viewed in the light of Prussian events, and especially the trend of political opinion among the Prussian people.[1]

The Constitution. — The written constitution under which the government of Prussia was formerly carried on was a product of the revolutionary movements of 1848.[2] It first took shape as a rescript promulgated December 5, 1848, by Frederick William IV, with a view to averting scenes of violence in Berlin such as the year had witnessed in Paris, Vienna, and other capitals. The king had promised not only that a constitution should at last be given the long-misgoverned country, but that the instrument should be "agreed upon with an assembly of

[1] Prussia was proclaimed a republic on November 13, 1918. A Constituent National Assembly of 401 members, chosen by universal, equal, and direct suffrage of men and women, met on March 14, 1919.

[2] Schapiro, *Modern and Contemporary European History*, 280.

the nation's representatives freely chosen and invested with full powers." This pledge, hastily given at a time when revolution seemed imminent, proved embarrassing when the danger had somewhat subsided. But crafty ministers suggested a way out of the difficulty: the king might draw up a constitution to his taste, promulgate it, put it into operation, and allow the first *Landtag* elected under it merely to agree, if it could, upon a legislative revision. This is the plan that was followed. The constitution was proclaimed, elections were held, and early in 1849 the chambers took up the problem of revision. The result was disagreement and, in the end, the dissolution of the lower house. Along with the original instrument, an electoral law had been issued introducing voting by secret ballot and conferring equal suffrage upon all male citizens. But the king now recalled this law and substituted for it another which not only abolished voting by ballot but made elections indirect, and, worse still, divided the voters into three classes whose electoral power was to be determined entirely by property qualifications or by official and professional status. In other words, he introduced the peculiar and grossly undemocratic three-class system which was already in use in some Prussian municipalities, and which survived, in both national and city elections, to the close of the Great War.

When elections were held, in the summer of 1849, in accordance with this system, the democrats refused to participate. The upshot was that the new chambers, convened August 7, 1849, proved tractable enough, and the text of the constitution, after being discussed and revised article by article, was finally given formal approval. On the last day of January, 1850, the instrument was duly proclaimed at Charlottenburg. During the following decade, Austria, Russia, and other reactionary powers sought to influence the king to repudiate his concessions. He refused, however, to do so; and, with certain modifications, the constitution of 1850 remained the fundamental law of the Prussian kingdom until after the Great War.[1]

In form, the instrument was modeled upon the Belgian constitu-

[1] On the rise of constitutionalism in Prussia see (in addition to works mentioned on p. 654) P. Matter, "La Prusse et la révolution de 1848," in *Rev. Hist.*, Sept.–Oct., 1902; P. Devinat, "Le mouvement constitutionnel en Prusse de 1840 à 1847," *ibid.*, Sept.–Oct. and Nov.–Dec., 1911; Klaczko, "L'agitation allemande et la Prusse," in *Rev. des Deux Mondes*, Dec., 1862, and Jan., 1863; C. Bornhak, *Preussische Staats- und Rechtsgeschichte* (Berlin, 1903); H. von Petersdorff, *König Friedrich Wilhelm IV* (Stuttgart, 1900); and H. G. Prutz, *Preussische Geschichte*, 4 vols. to 1888 (Stuttgart, 1900–02). For an extensive bibliography see *Cambridge Modern History*, XI, 893–898.

tion of 1830. Provisions concerning the position of the crown, the powers of the chambers, and the functions of the ministers were reproduced almost literally from the older document. None the less, the two rest upon widely differing bases. The Belgian fundamental law begins with the assertion that "all powers emanate from the nation." That of Prussia voiced no such sentiment, and the governmental system for which it provided had as its corner-stone the thoroughgoing supremacy of the crown. The liberals of the mid-century period were by no means satisfied with it; and, in the closing months of the revolutionizing Great War it still stood out among the great constitutional documents of the world so conspicuous by reason of its disregard of fundamental democratic principles as completely to justify both the attacks made upon it by reformers in Prussia and the demand of an outraged world, after 1914, that it be brought into line with modern political development. It provided for the responsibility of ministers, without establishing means by which that responsibility could be enforced; the most antiquated and undemocratic electoral system in Europe was grounded upon it. And, as is pointed out by Lowell, even where, on paper, it appeared to be liberal, it was much less so than its text would lead one to suppose.[1] It contained, for example, a bill of rights, which alone comprised no fewer than forty of the one hundred and eleven permanent articles of the instrument. In this section it guaranteed the personal liberty of the subject, the security of property, the inviolability of personal correspondence, immunity from domiciliary visitation, freedom of the press, toleration of religious sects, liberty of migration, and the right of association and public meeting. But there was an almost total lack of machinery for giving effect to the provisions. Guarantees of what would seem the most fundamental rights, as those of public assemblage and of liberty of teaching, were reduced in practice to empty phrases.

The process of constitutional amendment was easy. With the approval of the king, an amendment could at any time be adopted by a simple majority of the two legislative chambers, with only the special requirement that an amendment, unlike a statute, must be voted upon twice, with an interval of three weeks between the two votes. During the first ten years of its existence the constitution was amended not fewer than ten times. Of later amendments there were six, but none of more recent date than 1888. The Prussian system of amendment by simple

[1] *Governments and Parties in Continental Europe*, I, 286.

legislative process was incorporated, in 1867, in the fundamental law of the North German Confederation (except that in the Bundesrath a two-thirds vote was required); and in 1871 it was perpetuated, in principle, although not in detail, in the constitution of the Empire.[1]

The King and the Ministers. — The crown was hereditary in the male line of the house of Hohenzollern, following the principle of primogeniture. Certain sections of the constitution were devoted to an enumeration of the royal powers;[2] but it was never considered that the king was restricted to the powers there mentioned, and his sum total of authority was exceeded by that of no other European monarch. He was absolute commander of the army; he was head of the Church; all appointments to offices of state were made by him immediately or under his authority; the upper legislative chamber was recruited almost wholly by royal nomination; and all measures, before they became law, required the king's assent, although his control of the upper chamber was such that no measure of which he disapproved was ever enacted by that body, so that there was never an occasion for the exercise of the formal veto. In the words of a leading German jurist, the king possessed "the whole and undivided power of the state in all of its plenitude. It would, therefore, be contrary to the nature of the monarchical constitutional law of Germany to enumerate all individual powers of the king. . . . His sovereign right embraces, on the contrary, all branches of the government. Everything which is decided or carried out in the state takes place in the name of the king. He is the personified power of the state."[3] Except in so far as the authority of the sovereign was expressly limited or regulated by the constitution, it was absolute.

It has been pointed out that the German Emperor, as such,

[1] There is an annotated English version of the Prussian constitution, edited by J. H. Robinson, in the *Ann. of Am. Acad. of Polit. and Soc. Sci.*, Supplement, Sept., 1894. The original text will be found in F. Stoerk, *Handbuch der deutschen Verfassungen* (Leipzig, 1884), 44–63; also, with elaborate notes, in A. Arndt, *Die Verfassungs-Urkunde für den preussischen Staat nebst Erganzungs- und Ausfuhrungs-Gesetzen, mit Einleitung, Kommentar und Sachregister* (Berlin, 1889). The principal treatises on the Prussian constitutional system are H. Schulze, *Das preussisches Staatsrecht, auf Grundlage des deutschen Staatsrechtes* (Leipzig, 1872–74); *ibid.*, *Das Staatsrecht des Königreichs Preussen*, in Marquardsen's *Handbuch* (Freiburg, 1884); L. von Rönne, *Das Staatsrecht der preussischen Monarchie* (Leipzig, 1881–84); and H. de Grais, *Handbuch der Verfassung und Verwaltung in Preussen und dem deutschen Reiche* (11th ed., Berlin, 1896). A good brief account is A. Lebon, *Études sur l'Allemagne politique*, Chap. iv.

[2] Arts. 45–52. Robinson, *Constitution of the Kingdom of Prussia*, 36–37.

[3] Schulze, *Preussisches Staatsrecht*, I, 158.

had no "civil list." He had no need of one, for the reason that in the capacity of king of Prussia he had personal revenues and allowances exceeding those of practically all other European monarchs. After the increase provided for by law of February 20, 1889, the *Krondotations Rente*, as it appeared in the annual Prussian budget, aggregated seventeen million marks; in addition the king enjoyed the revenues from a vast amount of private property, comprising castles, forests, and estates in various parts of the realm. There were also certain special funds whose income was available for the needs of the royal family.

The organization of the executive — the creation of ministerial portfolios, the appointment of ministers, and the determination of departmental functions — rested entirely with the king, save, of course, for the necessity of procuring from the Landtag, or Parliament, the requisite appropriations. Beginning in the early nineteenth century with five, the number of ministries was gradually increased until after 1878 there were nine, as follows: foreign affairs; interior; ecclesiastical, educational, and sanitary affairs; commerce and industry; finance; war; justice; public works; and agriculture, public domains, and forests.[1] Each ministry rested upon an essentially independent basis, and there was little attempt to reduce the group to the uniformity or symmetry of organization that characterizes the ministries of France, Italy, and other continental monarchies. Departmental heads, as well as subordinates, were appointed solely with reference to their administrative capacity, not, as in parliamentary governments, in consideration of their politics or of their status in the existing political situation. They need not be, and usually were not, members of either of the legislative chambers. For it must be observed that the ministers were responsible only to the sovereign, which means that the parliamentary system, in the proper sense, did not exist. The constitution, it is true, prescribed that every act of the king should be countersigned by a minister, who thereby assumed responsibility for it. But there was no machinery by which this nominal responsibility could be made, in practice, to mean anything. Ministers did not retire by reason of an adverse vote in the Landtag; and, although upon vote of either legislative chamber, they could be prosecuted for treason, bribery, or violation of the constitution, no penalties were prescribed in the event of convic-

[1] On the functions of the various ministries see Dupriez, *Les ministres*, I, 448–462.

tion; so that the provision was of no practical effect.[1] Every minister had the right to appear on the floor of either chamber, and to be heard at any time when no member of the house was actually speaking. In the exercise of this privilege the minister was the immediate spokesman of the crown, a fact which was apt to be apparent from the tenor of his utterances.

The Landtag: House of Lords. — Legislative authority was shared by the king with a national assembly, the Landtag, composed of two chambers, of which the upper was known as the *Herrenhaus*, or House of Lords, and the lower as the *Abgeordnetenhaus*, or House of Representatives. Under the original provisions of the constitution, the House of Lords was composed of (1) adult princes of the royal family; (2) heads of Prussian houses derived directly from the earlier Empire; (3) heads of families designated by royal ordinance, with regard for rights of primogeniture and lineal descent; (4) 90 members chosen by the principal taxpayers of the kingdom; and (5) 30 members elected by the municipal councils of the larger towns. Under the law of May 7, 1853, this arrangement was, however, superseded by another which practically eliminated the elective elements. Thenceforth the body was made up as follows: (1) princes of the royal family who were of age; (2) scions of the Hohenzollern-Hechingen, Hohenzollern-Sigmaringen, and sixteen other families that once ruled within the present bounds of Prussia; (3) heads of the territorial nobility created by the king, and numbering some fifty members; (4) a number of life peers, chosen by the king from among wealthy landowners, great manufacturers, and men of renown; (5) eight titled noblemen appointed by the king on the nomination of the resident landowners of the eight older provinces of the kingdom; (6) representatives of the universities, of religious bodies, and of towns of over 50,000 inhabitants, nominated by these various organizations respectively, but finally appointed by the king; and (7) an indefinite number of members, chosen by the king for life on any ground whatsoever, and under no restriction except that peers must have attained the age of thirty years.

The composition of the chamber was thus extremely complex.

[1] Art. 61. Robinson, *Constitution of the Kingdom of Prussia*, 40. In the words of a German jurist, the anomaly continued to exist in Prussia of "ministerial responsibility solemnly enunciated in the constitution, the character of the responsibility, the accuser and the court specified, and at the same time a complete lack of any legal means by which the representatives of the people can protect even the constitution itself against the most flagrant violations and the most dangerous attacks." Schulze, *Preussisches Staatsrecht*, II, 694. Cf. Dupriez, *Les ministres*, I, 387–427.

There were members *ex-officio*, members by royal appointment, members by hereditary right. But the appointing power of the crown was so extensive that the body was at all times practically the creature of royalty. Its membership was recruited almost exclusively from the stanchly conservative landowning aristocracy, so that in attitude and policy it was apt to be in no degree representative of the mass of the nation, at least of the industrial classes. As a rule, although not invariably, it was ready to support the measures of the crown unhesitatingly. In any event, through exercise of the unrestricted power of creating peers, the crown was at all times in a position to control its acts. The number of members varied, but was ordinarily about 300.

The Landtag: House of Representatives and Electoral System. — The *Abgeordnetenhaus*, or House of Representatives, consisted of 443 members — 362 for the old kingdom, 80 added in 1867 to represent the provinces then acquired, and one added in 1876 to represent Lauenburg. Representatives were elected for a five-year term, and every Prussian was eligible who had completed his thirtieth year, who had paid national taxes for as much as three years, and whose civil rights had not been impaired by judicial sentence. At first glance, the suffrage seemed reasonably liberal. Every male citizen twenty-five years of age and upwards on the voters' list of his *Gemeinde*, or commune, was entitled to vote at parliamentary elections. More closely viewed, however, the system was liberal only in that few males beyond the age of twenty-five were without the suffrage. In its actual workings it was the most undemocratic in Europe. A brief description will make its shortcomings apparent.

Representatives were chosen in electoral districts, each of which returned from one to three members — as a rule, two. But there was no general redistribution of seats after 1860 (although some changes were made in 1906), and in many districts, especially in the urban centers whose growth had fallen largely within the past fifty years, the quota of representatives was grossly disproportioned to population. Until 1906, the entire city of Berlin returned only nine members, and its quota after that date was only twelve. The situation in this respect was fully as bad as in the Reichstag. In the next place, the enfranchised inhabitants of the district did not vote for a representative directly, nor did their votes have equal weight. The manner of election was, in brief, this: (1) each circle, or district, was divided into a number of *Urwahlbezirke*, or sub-districts; (2) in each *Urwahl-*

bezirk one *Wahlman*, or elector, was allotted to every 250 inhabitants; (3) for the choosing of these *Wahlmänner* the voters of the sub-district were divided into three classes, arranged in such a fashion that the first class would be composed of the payers of direct taxes, beginning with the largest contributors, who collectively paid one third of the tax quota of the sub-district, the second class would include the payers next in importance who as a group paid the second third, and the last class would comprise the remainder; (4) each of these classes chose, by absolute majority, one third of the electors to which the *Urwahlbezirk* was entitled; finally (5) all the electors thus chosen in the various *Urwahlbezirke* of the district came together as an electoral college and chose, by absolute majority, a representative to sit in the *Abgeordnetenhaus* at Berlin.[1]

This unique system was devised as a compromise between thoroughgoing democracy based on universal suffrage and a government exclusively by the landholding aristocracy. The three-class arrangement originated in the Rhine province, where the local government code of 1845 put it in operation in elections in the municipalities. In the constitution of 1850 it was adopted for use in the national elections, and in subsequent years it was extended to municipal elections in practically all parts of the kingdom, so that it came to be a characteristic and almost universal Prussian institution. It need hardly be pointed out that the scheme threw the bulk of political power, whether in municipality or in nation, into the hands of the people of wealth. In not fewer than 2214 *Urwahlbezirke*, some years ago, a third of the direct taxes was paid by a single individual, who therefore alone comprised the first electoral class; and in 1703 others the first class consisted of but two persons. In most cases the number of the least considerable taxpayers who in the aggregate paid the last third of the tax quota was relatively very large. Throughout the kingdom as a whole, there were, in 1908, 293,000 voters in the first class, 1,065,240 in the second, and 6,324,079 in the third. The first class represented four per cent of the population, the second class fourteen per cent, and the third class eighty-two per cent. The operation of the system, combined with the failure to redistribute seats, gave an enormous advantage to the conservative and agrarian interests and almost completely deprived the Socialists and other popular elements of representation. At the elections of 1903 the Socialists attempted for the first time in

[1] In the event that, between elections, a seat fell vacant, a new member was chosen by this same body of *Wahlmänner* without a fresh appeal to the electorate.

an organized way to win seats in the Landtag. Under the system which has been described, a total of 324,157 Conservative votes sufficed to elect 143 representatives, but 314,149 Social Democratic votes did not secure the return of a single member. In the Imperial elections of the same year, conducted under a scheme of equal suffrage, the popular party sent to the Reichstag eighty members. At the Prussian elections of 1908 a Social Democratic vote which formed approximately twenty-four per cent of the total popular vote yielded but seven members in a total of 443.[1]

The Movement for Electoral Reform. — For more than a generation prior to the Great War there was ceaseless agitation for electoral reform. In 1883, and again in 1886, the lower chamber debated, but rejected, a project for the substitution of the secret ballot for the existing *viva voce* method of voting. In 1883 the Social Democratic party announced the purpose of its members to abstain from voting until the inequalities arising from "the most wretched of all electoral systems" should have been removed. Gradually a program of reform was worked out to which Socialists, Liberals, and progressives of various schools gave adherence, wholly or in part, comprising four principal demands: (1) direct elections; (2) equal weight for votes; (3) secret ballot, and (4) redistribution of seats. To the outbreak of the Great War, these were the objects chiefly sought by the reform elements; and, as will presently be pointed out, the reform movement during the war gave these matters great prominence.[2]

In 1906 a bill raising the number of representatives from 433 to 443 and making provision for a slight redistribution of seats was carried, but a Radical amendment providing for direct and universal suffrage and the secret ballot was vigorously opposed by the government and failed of adoption. In January, 1908, the country was stirred by Socialist demonstrations in behalf of equal manhood suffrage. Prince von Bülow, while admitting that the existing system was defective, opposed the introduction in Prussia of the electoral arrangements of the Empire, alleging that it would not be compatible with the interests of the state,

[1] For a brief exposition of the practical effects of the system, especially on political parties, see Lowell, *Governments and Parties*, I, 305–308. The system as it operated in the cities is described in Munro, *Government of European Cities*, 128–135, and in R. C. Brooks, "The Three-Class System in Prussian Cities," in *Municipal Affairs*, II, 396 ff. Among special treatises may be mentioned H. Nézard, *L'Évolution du suffrage universel en Prusse et dans l'Empire allemand* (Paris, 1905); I. Jastrow, *Das Dreiklassensystem* (Berlin, 1894); R. von Gneist, *Die nationale Rechtsidee von den Ständen und das preussische Dreiklassensystem* (Berlin, 1904); and G. Evert, *Die Dreiklassenwahl in den preussischen Stadt- und Landgemeinden* (Berlin, 1901).

[2] See p. 706.

and contending that sound reform of the franchise must secure the preponderance of the middle class, and therefore must aim at the establishment of an equitable gradation in the weight of the various classes of votes. It was added that the government would consider whether this object might best be attained by basing the franchise entirely upon the amount of taxes paid by the voter, or by taking into account age, educational attainments, or other qualifications. When the Radicals introduced a resolution declaring for equal manhood suffrage the Clericals and the Poles supported it, but the Conservatives and the National Liberals of all shades stood by the government, and the resolution was overwhelmingly rejected. The elections of June, 1908, at which, as has been pointed out, seven Social Democratic members were returned, demonstrated that even under existing electoral arrangements dissatisfaction could find some expression. The National Liberals and the Free Conservatives, who had been outspoken in opposition to the extension of the suffrage, lost, respectively, twelve and four seats. When, however, the Radical resolution reappeared it was again thrown out.

Popular demonstrations in Berlin and other centers convinced the government that it would be wise to relax its inflexible attitude. In a speech from the throne, January 11, 1910, the king announced the early appearance of a measure for electoral reform, and a month later it became the unwelcome duty of the new Chancellor, von Bethmann-Hollweg, to lay the government's project before the chambers. It was instantly evident, not only that the proposal had been prepared under bureaucratic direction, but that the real purpose of the government was to carry through the Landtag an electoral bill designed to appease the reformers without abandoning the essential features of the existing system. The project provided, in brief: (1) that the tripartite arrangement should be retained, although the quota of taxes admitting to the first class should be reduced to a uniform level of five thousand marks (no weight being given to payment beyond that amount), and voters of specified degrees of education, or occupying certain official positions, or having served a stipulated number of years in the army or navy, should be assigned to the higher classes, with but incidental regard to their tax contributions (2) that *viva voce* voting should be retained; (3) that the choice of electors should be by districts rather than by *Urwahlbezirke;* and (4) that direct voting should be substituted for indirect. There was no mention of redistribution, and the secret ballot was withheld. The rearrangement of classes did not touch the

fundamental difficulty; indeed, the only demand of the reformers that was really met was that for direct elections. In his speech in defense of the measure the Chancellor frankly admitted that the government was irrevocably opposed to a suffrage system based on democratic principles.

The scheme was ridiculed by the liberal elements. In protest against the nonchalance with which the door had been shut in their faces, the working classes in Berlin and elsewhere entered upon a fresh series of demonstrations which embarrassed the government for several weeks. In the Landtag the Conservative and Free Conservative parties, forming the government majority, stood solidly for the bill, in the conviction that if there must be change at all those changes which the bill proposed would be less objectionable than those which were being urged by the radicals. The Center wavered, while the National Liberals, the Poles, the Social Democrats, and the Progressive People's party stood firmly in opposition. On February 13 the bill was referred in the lower house to a committee, which reported it so amended as to provide for the secret ballot, but not for direct elections. On March 16, by a vote of 283 to 168, the measure in this amended form was passed by the chamber, all parties except the Conservatives and the Center voting against it. On April 29 the bill was passed in the upper chamber, by a vote of 140 to 94, in the form in which it had originally been introduced. All efforts on the part of the government to bring the lower house to an acceptance of the original measure proved fruitless, and the upshot was that the project was withdrawn.

Reconstruction of the antiquated electoral system, both national and municipal, remained at the outbreak of the Great War a live issue; but agreement upon a definite project of reform seemed remote. The problem was enormously complicated by the traditions of aristocratic, landed privilege which permeated the inmost parts of the Prussian political system. In the matter of redistribution, too, a fundamental obstacle lay in the consideration that such a step on the part of Prussia would almost of necessity involve a similar one on the part of the Empire. In both instances the insuperable objection, from the point of view of the government, arose from the vast accession of political power that would accrue from such a reform to the Socialists and to other radical parties.[1]

[1] P. Matter, "La réforme électorale en Prusse," in *Ann. des Sci. Polit.*, Sept., 1910; C. Brocard, "La réforme électorale en Prusse et les partis," in *Rev. Polit. et Parl.*, Feb., 1912.

Actual Character of the Landtag. — The maximum life of a Landtag was five years. The lower chamber might, however, be dissolved at any time by arbitrary act of the crown, and there were instances of the dissolution of a newly elected chamber on account of its objectionable political character before it had been convened for so much as a single sitting. Each house elected its own officers, and regulated its own order of business, and proceedings were normally open to the public. At the opening of a session the House of Lords was divided into five *Abtheilungen*, or sections, and the House of Representatives into seven. In the lower house the division was made by lot; in the upper, by the president. In both instances it was made once for an entire session, not monthly as in France, or bi-monthly as in Italy. The function of the *Abtheilungen* was to appoint committee members, and, in the lower house, to examine election returns with a view to final validation by the chamber itself. Each house had eight standing committees, and special committees were created as need arose.

The Landtag was, of course, a national legislature. The rights of independent deliberation which it exercised, however, were so scant as to be almost negligible. In theory, each chamber had full power to initiate legislation; in practice, almost all bills were introduced by the government, and the chambers contented themselves with discussion and proposing amendments. It sometimes happened that, as in the case of the Electoral Reform Bill of 1910, the lower house so emasculated a measure as to compel the government to withdraw it. But, speaking broadly, it may be said that Prussian legislation was projected and formulated by the crown and the ministers and merely ratified by the Landtag.[1] There was always a question as to whether the stipulation that all laws required the assent of the two houses covered, under every circumstance, the appropriation of money. In practice, appropriations were regularly voted in the chambers, and in fact it was required that the budget and all fiscal measures should be presented first to the lower house, and should be accepted or rejected as a whole by the upper one. But during the years 1863–67 the government, under Bismarck's leadership, asserted

[1] "According to the doctrine almost, if not quite, unanimously held by German jurists, the people through their elected representatives participate, not in the creation of law, but in the determination of the contents of a proposition which is to be submitted to the sovereign for the exercise of his supreme legislative will. And not until that will has been approvingly exercised does the measure become legally executory (*Gesetzbefehl*)." W. W. Willoughby, *Prussian Political Philosophy* (New York, 1918), 103.

and exercised the power of collecting and expending the revenues of the state on the basis of standing laws, thus entirely suspending the legislative appropriating power; and the question has not been settled by Prussian jurists as to whether such a thing might not have been done again.[1]

On the side of administration, also, the powers of the Landtag were merely nominal. Each chamber had a right to present memorials to the king; to refer to the ministers documents addressed to it, and to demand explanations concerning complaints made therein; and to appoint commissions for the investigation of subjects for its own information. The right of interpellation was expressly recognized. But, as has been pointed out, the ministers were not responsible to the legislative chambers, and neither they nor the king himself could be compelled to give heed, unless they so desired, to legislative protests, demands, or censure. Where a parliamentary system does not exist, the influence of the legislative branch upon matters of administration is likely to be confined to the simple assertion of opinion.

Local Government: Origins and Principles. — In most of their essential features, the machinery of local administration and the connections between the central and local authorities in Prussia to-day date from the reforms of the Stein-Hardenberg ministries in the early years of the nineteenth century. Under the memorable Municipal Edict (*Städt-Ordnung*) of November 19, 1808, Stein set up a complete municipal system, with burgomasters, executive boards, and town councils (all elective), and swept away the oligarchy of the gilds, broadened the franchise, and conferred almost complete independence upon the towns, even in the matter of taxation. An edict of 1831 revived the power of the central authorities to supervise local taxation and introduced a number of other changes; but, on the whole, the municipal system of the present day is based upon the edict of Stein. More immediately, it rests upon an act of 1853, which originally applied only to the six eastern provinces of the kingdom, but was eventually extended to the others. It was under this last-mentioned decree that the three-class system in local elections was gradually spread over the country.[2] Neither Stein nor Hardenberg touched the rural communes, but the extension, during the Napoleonic occupation, of the French communal

[1] Lowell, *Governments and Parties*, I, 298. The great constitutional conflict of this period in Prussia is clearly described in Dawson, *German Empire*, I, Chap. iv.

[2] The text of the law of 1853 is printed in the appendix of A. W. Jebens, *Die Städtverordneten* (Berlin, 1905).

system into all the Prussian territories west of the Elbe prepared the way for the essentially uniform system which was established by the Westphalian and Rhineland Edicts of 1841 and 1845. Edicts of 1807 and 1811 abolished the aristocratic basis of the ancient circles (*Kreise*), and after 1815 the circle as a unit of local government next above the commune was extended to all the conquered or reconquered territories. The revival of the old provincial organization was begun also in 1815, when the kingdom was divided into ten provinces; and in the same year twenty-six government districts (*Regierungsbezirke*) were established, two or three in each province, each under the control of one of the government boards (*Regierungen*) whose creation was begun in 1808.[1]

Soon after the founding of the Empire, Bismarck turned his attention to a reorganization of local government; and while his reforms were designed, of course, only for Prussia, they were copied to such an extent in other German states that the Empire was brought to a substantially common basis. The Chancellor was no believer in democracy. But he thought that, with a view to both economy and stability, the local administrative authorities should be made to include not only a paid, expert bureaucracy, but a considerable element of unpaid lay or non-official persons, drawn principally from the large landowners and taxpayers. The obstacles to be overcome, arising from public indifference, the opposition of the existing bureaucracy, the apprehensions of the conservatives, and sectional differences and antipathies, were enormous; but by proceeding slowly and in a conciliatory spirit the government was eventually able to carry out its plans. The first enactments, for the circles in 1872 and for the provinces in 1875, applied only to those provinces which had formed the old monarchy, but during the next ten years similar measures were extended to the remainder of the kingdom, and, finally, after the dismissal of Bismarck, the task was rounded out by a great *Landgemeinde-Ordnung* issued for the seven eastern provinces in 1891. This series of enactments gave the administrative methods and machinery of the kingdom almost precisely the character they have had in the most recent years.[2]

[1] E. Meier, *Die Reform der Verwaltungsorganisation unter Stein und Hardenberg* (Leipzig, 1881).

[2] Throughout these reforms English local institutions were closely studied and to a considerable extent copied. In a number of scholarly volumes which appeared between 1863 and 1872 the genius of these institutions was convincingly expounded by the jurist Rudolph Gneist, whose thesis was that the failure of parliamentary government in Prussia and the success of it in Great Britain was to be attributed to

Although the system is still one of the most complicated in Europe, it is infinitely simpler than it once was, and the bureaucratic forces in it, if still predominant, have been brought under restraint. The principles underlying it have been summarized by an English writer as follows: "The first is the careful distinction drawn between those internal affairs in which the central government is thought to be directly concerned, and those which are held to be primarily of only local interest. The former group includes, besides the army, the state taxes and domains, ecclesiastical affairs, police (in the wide Prussian meaning of the term), and the supervision of local authorities; whilst roads, poor relief, and a number of miscellaneous matters are left to the localities. These two groups are kept carefully separate, even when they are intrusted to the same authority. Secondly, the work of the central government is "deconcentrated," that is, the country is divided into districts (which may or may not be coincident with the areas of local self-government), in each of which there is a delegation of the central authority, doing its work, and thereby lessening the pressure upon the departmental offices in Berlin. Something like this deconcentration is found in the educational organization of France, and also in the office of the prefect, but it is far more elaborate, and the machinery much more complex, in Prussia. Thirdly, the comparative independence of the executive from the deliberative authority, and the predominance of the officials, which characterize the central government of Prussia, repeat themselves throughout the whole of local government. And, finally, in all except the largest of the Prussian areas of local self-government, the executive agents of the locality, elected by it, are also the representatives of the central government; as such they are members of the bureaucracy and controlled by it, and in consequence they naturally look to the center for guidance and direction in regard to local affairs. Therefore, whilst it would be inaccurate to say that local self-government, as understood in England, does not exist in Prussia, it is true that self-government there is weak, that it is not so much the exercise of the will of the locality within limits prescribed (for the protection of the whole community) by the central power, as the exercise of the will of the latter by the locality. In fact, the bureaucracy rules; and it is fortunate for Prussia that hitherto

the dissimilarity of the local governments of the two countries. These writings supplied Bismarck's practical proposals with a useful theoretic basis. The most important of them were *Geschichte des Self-government in England* (1863); *Verwaltung, Justiz, Rechtsweg* (1867); *Die preussische Kreis-Ordnung* (1871); and *Der Rechtsstaat* (1872).

the bureaucracy has remained intelligent and respective of new ideas."[1] At the same time it is to be observed that, while the professional, lifelong holders of office continue to preponderate as in no other important country of western Europe, the class of non-professionals is large and increasing. As a rule, the first class is salaried, the second is not; the non-professionals being simply citizens who, moved by considerations of a civic and social nature, give their services without prospect of pecuniary reward. The principle of the system is, as Ashley characterizes it, that of government by experts, checked by lay criticism and the power of the purse, and effectively controlled by the central authorities.

Local Government: the Province.—Aside from the cities, which have their special forms of government, the administrative units of Prussia, in the order of their magnitude, are: (1) the *Provinz*, or province; (2) the *Regierungsbezirk*, or district; (3) the *Kreis*, or circle; (4) the *Amtsbezirk*, or court jurisdiction; and (5) the *Gemeinde*, or commune. Of these, three — the first, third, and fifth — are spheres both of the central administration and of local self-government; two — the second and fourth — exist for administrative purposes only. Of provinces there were, to 1919, twelve: East Prussia, West Prussia, Brandenburg, Pomerania, Silesia, Posen, Westphalia, Saxony, Hanover, the Rhine Province, Schleswig-Holstein, and Hesse-Nassau. Unlike the French and Italian departments, these Prussian provinces were historical areas, of widely varying extent and, in some instances, of not even wholly continuous territory. Thus Hanover was, geographically, the kingdom once united with the crown of Great Britain; Schleswig-Holstein comprised the territories wrested from Denmark in 1864; Saxony was the country taken from the kingdom of Saxony at the close of the Napoleonic wars; and Posen represented Prussia's acquisitions from the successive partitions of Poland in the eighteenth century. The loss of thousands of square miles of territory under the terms of the treaty of Versailles has entailed a reconstruction of provincial divisions — as, indeed, of administrative areas generally; but at the date of writing (1920) the new arrangements have not been definitely worked out.[2]

In the organization of the province there is a complete separa-

[1] Ashley, *Local and Central Government*, 130–132.

[2] In this connection it should be made clear that the system of local government here described is that which existed prior to the German defeat in the Great War. The collapse of monarchy and of the old Imperial system did not, however, entail any general reorganization of the local machinery of justice and administration, whatever changes may eventually come about.

tion of functions relating to the affairs of the state as a whole (*Staatsgeschäfte*) from those relating only to matters of a local nature. In the circle, as will appear, the two sets of functions are discharged by the same body of officials; in the district, the functions performed are wholly of a national, rather than a local, character. But in the province there are not merely two sets of functions but two separate groups of officials. For the administration of affairs of national interest, such as police, education, and religion, the authorities within the province are (1) the *Oberpräsident*, or chief president, appointed by the central government to represent it in matters which concern the entire province or reach beyond the jurisdiction of a single *Regierungsbezirk* administration, and (2) the *Provinzialrath*, a provincial council consisting of, besides the *Oberpräsident* or his representative as presiding officer, one professional member appointed for an indefinite tenure by the Minister of the Interior at Berlin and five ordinary citizen members elected, usually for a term of six years, by the provincial *Ausschuss*, or committee. The *Oberpräsident* is the immediate agent of the ministry, as is the prefect in France; none the less, by virtue of the fact that most of his acts are valid only after having received the assent of a body whose members are largely chosen within the province, his authority is not quite absolute.

By the side of this official group stands another, quite independent of it, for the control of affairs of purely local concern. Its organs comprise: (1) the *Provinzialausschuss*, or provincial committee, consisting of from seven to fourteen members elected for six years by the provincial Landtag, not necessarily, but almost invariably, from its own membership; (2) a *Landeshauptmann* or *Landesdirektor*, a salaried executive official elected by the Landtag for six or twelve years and confirmed by the crown; and (3) the *Provinziallandtag*, or provincial assembly. The *Landeshauptmann* is the executive, the *Provinzialausschuss* the consultative, organ of local self-administration; the *Provinziallandtag* is the provincial legislature. Members of the Landtag are elected for six years (one-half retiring every three years) by the diets of the circles, and they are, as a rule, local administrative officials of the circles, large landowners, and other well-to-do persons. Meetings are called at least every two years. The Landtag's functions include the supervision of charities, highways, and industry; the voting of local taxes and the apportionment of them among the circles; the enactment of local laws; the custody of provincial property; the election of the *Landes-*

hauptmann and the members of the provincial committee; and the giving of advice on provincial matters at the request of the central government.

Local Government: Minor Areas. — Each province is divided into *Regierungsbezirke*, or districts, of which there were in 1918 thirty-six. Unlike the province, the district exists for purposes of general administration only. It therefore has no organs of self-government. Its *Regierung*, or "administration," consists of a body of professional, salaried officials, appointed by the central government and having at its head the *Regierungspräsident*, who is, on the whole, the most important official in the Prussian local service. The subjects that fall within the jurisdiction of the *Regierung*, including taxation, education, religion, forests, etc., are very comprehensive, and the work of administration is carried on chiefly through "colleges," or boards. For the management of police and the supervision of local bodies there exists a *Bezirksausschuss*, or district committee, composed of the *Regierungspräsident*, two other persons appointed by the central government, and four members elected by the *Provinzialausschuss* for six years. A very important function of this body since 1883 is that of sitting, under the presidency of one of its members appointed for his judicial qualifications, as the administrative court of the district.

In the *Kreis*, or circle, as in the province, there are two sharply distinguished sets of governmental functions, the general and the local; but for the administration of both there is a single hierarchy of officials. The number of circles was in 1918 about 490, with populations varying from 20,000 to 80,000. Each includes all towns lying within it which have a population of less than 25,000. A town of over 25,000 is likely to be created, by ministerial order, a circle within itself, in which case the functions of government are exercised by the municipal authorities. The essential organs of government within the *Landkreise*, or country circles, are three: the *Landrath*, the *Kreisausschuss*, and the *Kreistag*. The *Landrath* is appointed for life by the central government, frequently on nomination by the *Kreistag*, or diet. He superintends all administrative affairs, general and local, within the circle; fulfills the functions of chief of police; presides over the *Kreisausschuss* and *Kreistag;* and, in general, occupies within the circle the place occupied within the province by the *Oberpräsident*. Associated with him, and organized under his presidency, is the *Kreisausschuss*, or circle committee, composed of six unofficial members elected by the *Kreistag* for six

years. In addition to its consultative functions, the *Kreisausschuss* sits as an administrative court of lowest grade.

The *Kreistag* is the legislative body of the circle. Its members, numbering at least twenty-five, are elected for a term of six years by three *Verbände*, or colleges, the first being made up of the cities, the second of the large rural taxpayers, the third of a complicated group of rural interests in which the smaller taxpayers and delegates of the communal assemblies preponderate. The *Kreistag* is a body of substantial importance. It chooses, directly or indirectly, all the elective officials of the circle, of the district, and of the province; it creates local officers and regulates their functions. It enacts legislation of a local nature; and it votes the taxes required for both its own and the provincial administration.

The smallest of Prussian governmental units is the *Gemeinde*, or commune.[1] Of communes there are two distinct types, the rural (*Landgemeinde*) and the urban (*Stadtgemeinde*). The governments of the rural communes (some 36,000 in number up to 1918) are so varied that any general description of them is impossible. They rest largely upon local custom, although reduced at some points to a reasonable uniformity under regulating statutes such as were enacted for the communes of eight of the twelve provinces in the *Landgemeinde-Ordnung* of 1891.[2] There is invariably an elective *Schulze*, or chief magistrate. He is assisted ordinarily by from two to six aldermen (*Schöffen*) or councilors. And there is generally a governing body (*Gemeindevertretung*), composed of elected representatives, when there are as many as forty qualified electors, — otherwise the people acting in the capacity of a primary assembly (*Gemeindeversammlung*), — for the decision of matters relating to local schools, churches, highways, and similar interests. It is to be observed, however, that most of the rural communes are so small that they have neither the financial resources nor the administrative ability to maintain a government of much virility. Such action as is taken within them is almost invariably taken with the approval of, and under the guidance of, the authorities of the circle, principally the *Landrath*.

In their governmental arrangements the urban communes are more uniform than the rural ones. The usual authorities

[1] The *Amtsbezirk* is essentially a judicial district. In the eastern provinces it is utilized also for purposes of police administration.

[2] For an annotated edition of this important instrument see F. Keil, *Die Landgemeinde-Ordnung* (Leipzig, 1890).

are: (1) a *Stadtrath*, an executive body consisting of a burgomaster and a number of assistants, elected for six, nine, or twelve years, or even for life, and (2) a *Stadtverordnete*, or municipal council, chosen for from three to six years, as a rule by an electorate identical with that which returns the members of the lower branch of the Prussian Landtag.[1]

[1] On Prussian local government see Lowell, *Governments and Parties*, I, 308–333; Goodnow, *Comparative Administrative Law*, I, 295–338; and Ashley, *Local and Central Government*, 125–186, 363–387. Fuller accounts are H. G. James, *Principles of Prussian Administration* (New York, 1913); Schulze, *Das preussische Staatsrecht*, I, 436–538; K. Stengel, *Organisation der preussischen Verwaltung*, 2 vols. (Berlin, 1884); C. Bornhak, *Preussisches Staatsrecht*, 3 vols. (Freiburg, 1888–90), and Hue de Grais, *Handbuch der Verfassung und Verwaltung in Preussen*, etc. (17th ed., Berlin, 1906). Texts of local government acts are printed in G. Anschutz, *Organisationsgesetze der innern Verwaltung in Preussen* (Berlin, 1897). The best description in English of Prussian municipal government is Munro, *Government of European Cities*, 109–208. A good brief sketch is Ashley, *Local and Central Government*, 153–164. The best account in German is H. Kapplemann, "Die Verfassung und Verwaltungsorganisation der preussischen Städte," in *Schriften des Vereins fur Sozialpolitik* (Leipzig, 1905–08), vols. cxvii–cxix. Mention may be made of A. Shaw, *Municipal Government in Continental Europe* (New York, 1895), Chaps. v–vi; E. J. James, *Municipal Administration in Germany* (Chicago, 1901); and Leclerc, "La Vie municipale en Prusse," in *Ann. de l'École Libre des Sci. Polit.*, Oct., 1888. For an extended bibliography see Munro, *op. cit.*, 389–395.

CHAPTER XXXVII

POLITICAL FORCES AND PARTY ALIGNMENTS TO 1914

The Survival of Absolutism.— For a generation before the Great War Germany was a paradox among nations. Her population had risen since 1870 from forty millions to sixty-seven millions; her advance in industry and trade, and her growth in wealth, had been phenomenal; she had outdistanced most, if not all, of the world in the application of science to manufacturing and agriculture; she had been the pioneer in most forms of social legislation; her scholarship was, in many fields, unsurpassed; her achievements in music, art, and literature commanded the world's admiration. But alongside these evidences of enlightenment and progress stood one of the most antiquated and illiberal governmental systems on earth. Not that the forms of liberalism were altogether lacking. "Whoever," says a former American ambassador to Germany, "will take in hand the constitution of the German Empire and read it merely as a document will be surprised, if not already familiar with its contents, at the façade of liberalism that presents itself. . . . Ninety-nine one-hundredths of the Imperial constitution could be transcribed into the constitution of the most democratic federal state without serious criticism."[1] Nor yet was there any lack of orderliness and efficiency in public administration. Not even the Roman government in its best days, nor the British government of later times, executed law, controlled finance, managed the armed forces, and held the allegiance of its subjects with greater success. Enough has been said in preceding chapters, however, to make it plain that while the German people may have had orderly, efficient, and even "scientific" government, this government was not of their own making, and was not under their control. Autocracy was the price they paid for their economic and social advantages; and, as will be pointed out presently, when the war came on in 1914 there were accumulating evidences that they had begun to regard the price as too great.

[1] D. J. Hill, *Impressions of the Kaiser* (New York, 1918), 6.

What is the explanation of this remarkable survival of autocracy and paternalism in a country of much general enlightenment, and in an age of rapidly spreading democracy? A full answer would demand many chapters of intricate political and social history. Enough has been told, however, to reveal two or three main facts in the situation, especially (1) that for a decade or more preceding 1848, including the revolutionary years 1848–49 Germany wavered well between the old autocracy and the new liberalism, (2) that, because of their lack of unity, experience, and practical sense the liberal elements lost their great chance, and (3) that the work of national unification and constitution-framing accordingly fell to the ultra-conservative forces, *i.e.*, the Prussian government, and especially Bismarck, who had the organization, the political skill, and, withal, the military force, requisite for carrying out the work on lines favorable to their own interest. Once securely established, the system was maintained against all assaults, until the military *débacle* of 1918, by a dynasty of divine-right monarchs, governing under the ægis of a peculiarly reactionary Prussian political philosophy, supported by a powerful landed aristocracy, equipped with the best trained army in the world, buttressed by an imposing and apparently invincible *Kultur*, and grounded upon an ingrained habit of popular obedience.[1]

The Hohenzollern Dynasty. — This leads to a somewhat closer scrutiny of the great bulwarks of German autocracy in the pre-war period. They have, indeed, already been named: the Prussian hegemony; the Hohenzollern dynasty; the "Junkers," or landed proprietors; the army; the somewhat ill-defined but none the less potent body of ideals and practices known as *Kultur;* and popular submissiveness and inertia. Of the preponderance of Prussia, as a state, in the German Empire enough has been said. In characterizing the several bulwarks of autocracy, however, we shall still be speaking of Prussia; for "Prussianism" has been the tap root of German illiberality of thought and action.

The first of these bulwarks was the Hohenzollern dynasty. The Hohenzollerns first appear, as early as the tenth century, as petty counts governing from a castle on the hill of Zollern near the present northern boundary of Switzerland. Their im-

[1] Attention may be called at this point to J. Barthélemy, *Les institutions politiques de l'Allemagne contemporaine* (Paris, 1915), a book which is not wholly free from the influence of war psychology, but which none the less contains an admirable presentation of the real character of German government before 1914.

portance as a ruling family dates from the early fifteenth century, when the Emperor invested them with the electorate of Brandenburg, lying along the Oder River and including the future site of Berlin. A hundred years later they accepted Lutheranism and with its aid began building up leadership in the Protestant north. Another hundred years, and they gained by cleverly arranged marriage alliances the duchy of Cleves, carrying their power to the Rhine, and also the almost purely Slavic duchy of East Prussia, carrying it eastward to the Russian border. In the seventeenth century the ruling prince was known simply as an "elector." But in 1701 Frederick III, son of the "Great Elector," was authorized by his Imperial overlord to take the title of "king." The title was first borne in Prussia alone; and hence *Prussia*, rather than Brandenburg, became the official name of the entire dominion. Most of the successive rulers — particularly Frederick William, the Great Elector (1640–88), King Frederick William I (1713–40), and King Frederick II, or Frederick "the Great" (1740–86) — were masterful, crafty, autocratic monarchs, and during their long and eventful reigns the power of the dynasty steadily grew, by conquests, annexations, alliances, and diplomatic strokes. The rulers were of an iron race, and were not troubled with scruples in dealing with either friends or enemies. They reigned by "divine right," had nothing but contempt for ideas of popular sovereignty, and made the army the center and defense of their political system.

In the Napoleonic period Prussia fell on evil days; and for half a century afterwards its kings, while true Hohenzollerns in their claims to divine right and their exaltation of the army, were cast in an inferior mold. Even William I, the first wearer of the new Imperial crown, was completely overshadowed by Bismarck. At his death, in 1888, Prussia (and therefore all Germany) came to the parting of the political ways. The heir to the throne was Frederick III, surnamed "the Noble," a man of known liberal views; and while he had declared to Bismarck three years earlier that he had no intention of setting up a parliamentary system of government,[1] it was widely believed then, and is commonly supposed now, that he was an admirer of the English system of government, and that if he had lived, the Imperial constitution would have been interpreted in a liberal spirit, ministers would have been selected with a view to harmony with majorities in the Reichstag, the king would have become rather an adviser than an actual executive, and the

[1] *Reflections and Reminiscences*, II, 304–305.

whole tendency would have been toward political freedom and responsibility. But Frederick was already stricken with fatal disease at his accession, and he reigned exactly ninety-nine days. His death brought to the throne the "young man," as Bismarck somewhat contemptuously called him, William II.[1]

William II and the Prussian Doctrine of Monarchy. — The triumphs over Austria and France, the return of the victorious armies, the coronation of his grandfather, the exhilaration of a unified and exalted Germany, the new prestige of Prussia, the intoxicating successes of diplomat and soldier, had left indelible impressions upon the youthful prince's mind; and if any one wondered what the new ruler's principles and policies would be, all doubts were soon cleared away. All the characteristics and the traditions of the Hohenzollerns found place in William II's make-up, — some of them multiplied many fold. He believed implicitly in his own divine right to rule. In 1910 he declared in an address at Königsberg that his "grandfather by his own right placed the crown upon his head, insisting once again that it was bestowed upon him by the grace of God alone, and not by parliaments or by the will of the people. . . . I, too, consider myself a chosen instrument of Heaven, and I shall go my way without regard to the views and opinions of the day." "Remember," he said in a proclamation to the army of the East in 1914, "that the German people are the chosen of God. On me, as German Emperor, the spirit of God has descended. I am His weapon, His sword, and His vicegerent. Woe and death to those that shall oppose my will. Woe and death to those who do not believe in my mission. Let them perish, all the enemies of the German people! God demands their destruction, God who, by my mouth, bids you do His will." He frankly avowed his claim to absolute control of public affairs. "There is but one master in the country," he declared in 1891; "it is I, and I will bear no other." He held the constitutions of both Prussia and the Empire sacred, because they allowed free play for autocracy. "I am of the opinion," he said at his accession, "that our constitution establishes a just and useful partition of public powers

[1] A popular but trustworthy account of the Hohenzollerns to the time of William II is E. A. B. Hodgetts, *The House of Hohenzollern* (New York, 1911). The most dispassionate book on William II is S. Shaw, *William of Germany* (New York, 1913). A war-time biography by a former Berlin correspondent of the London *Times* is G. Saunders, *Builder and Blunderer* (New York, 1914). A principal source of information is the Emperor's published speeches, of which there are several editions, including W. von Schierbrand [ed.], *The Kaiser's Speeches* (New York, 1903). See also P. de Visscher, *La liberté politique en Allemagne et la dynastie des Hohenzollern* (Paris, 1916).

in the life of the State; and for that reason also, and not only because of my oath, I will observe and defend it." He regarded education as the handmaid of his autocratic government. Of the elementary school teacher and the university professor alike he said: "According to his rights and duties, he is, in the first place, a state official. In this position he should do what is demanded of him. He should teach the young and prepare them for resisting all revolutionary aims." "I want soldiers," he said angrily, when complaining that the schools made their pupils near-sighted.

The doctrine of divine right lost its influence in England with the final downfall of the Stuarts, in France at the time of the Revolution, in Belgium at the establishment of national independence, in Italy during the unification. In Germany, and especially in Prussia, it lived on. The monarchs continually reasserted it; and no organized portion of the people except the Social Democrats developed a political philosophy that was opposed to it. The attitude of the political theorists and the constitutional jurists prior to 1918 was not clear. They had not, of late, given the doctrine direct support. Yet they, or most of them, enunciated views which led to the same general result. They taught that the Teutons are, by very nature, monarchically minded; that only by means of strong monarchy could their *Kultur* be maintained and spread throughout the world; that the problem of efficient government is one that under most circumstances can best be solved when strong monarchical direction and control is provided; and that for Germany, considered with reference to her relations with the neighboring states and her general position in world politics, strong monarchy was indispensable. The apotheosis of political power which one finds in their treatises raises the acts of the monarch, as one writer has put it, "above the plane within which considerations of ordinary morality apply, and ascribes to the political entity a welfare and a purpose other than and distinct from, and in some cases not even related to, the welfare of the individuals who are subject to its authority."[1]

[1] Willoughby, "The Prussian Theory of Monarchy," *Amer. Polit. Sci. Rev.*, Nov., 1917. For a more extensive discussion of the subject see the same writer's *Prussian Political Philosophy* (New York, 1918), Chaps. ii–v. The most influential German treatise on political theory is H. von Treitschke, *Politik*, 2 vols. (Leipzig, 1898–99), trans. by B. Dugdale and T. de Bille as *Politics*, 2 vols. (New York, 1916). For an appraisal of Treitschke's influence see H. W. C. Davis, *The Political Thought of Heinrich von Treitschke* (London, 1914), and A. Hausrath, *Treitschke* (New York, 1914). J. Dewey, *German Philosophy and Politics* (New York, 1915), deals largely with the general point of view represented by Treitschke. For William II's

The Army. — Of cardinal importance was, of course, the Emperor's attitude toward the army, whose sure support was for generations one of autocracy's mightiest assets. "The absolute and indestructible fidelity of the army," runs the Kaiser's rescript addressed to the soldiery on the day of his accession, "is the heritage transmitted from father to son, from generation to generation. . . . We are inseparably united. . . . We are made for each other, I and the army, and we shall remain closely attached whether God gives us peace or storm." Addressing a body of recruits in 1891, he declared: "You are now my soldiers; you have given yourselves to me body and soul. There is now but one enemy for you, and that is my enemy." Paraphrasing, on another occasion, the famous saying of Bismarck, he asserted: "The soldier and the army, not parliamentary majorities, have welded together the German Empire — my confidence is placed in the army." From these and many other expressions that could be quoted, it is evident that William II looked upon the army as a dynastic possession, and as a personal tool wherewith to uphold the existing order of things and carry out the imperial purposes. It was the army, as one writer has put it, that "could enable him to read into the Imperial constitution the full meaning of the Hohenzollern traditions, and make the whole realm what his ancestors had made Prussia, a patrimonial estate to be transmitted by him to future generations of his House."[1] The various devices by which the entire German military establishment was brought under Prussian control, and accordingly under the absolute direction of the Kaiser, have been explained elsewhere.[2] "The question by which to decide the essential character of a state," says a German scholar, is, "Whom does the army obey?" To 1918, this question in Germany could be answered in only one way. The Reichstag had practically no authority over it; the states had largely surrendered their control; the Kaiser alone dominated; even the army budget was voted, not annually, as in England, France, and the United States, where the military is under the full control of the civil power, but for five-year periods.[3]

conception of his office and function see von Schierbrand, *The Kaiser's Speeches*, passim, and H. Perris, *Germany and the German Emperor* (New York, 1912), Chap. viii.

[1] Hill, *Impressions of the Kaiser*, 10.

[2] See pp. 632–633.

[3] For farther expressions of William II's attitude toward the army and navy see von Schierbrand, *The Kaiser's Speeches*, Chaps. x–xi. The classic glorification of the army and of military power as a factor in national life is F. von Bernhardi,

The "Junkers." — Another bulwark of autocratic government was the landed aristocracy of eastern and northeastern Prussia. German agrarian development has been regional rather than national; that is to say, the ownership and use of land took a different trend in each of three main sections of the country. The southwest (including Bavaria, Baden, Württemberg, and Rhenish Prussia) became, like France, a land of small holdings, and up to the Great War was the only part of the Empire in which it was possible to discover peasant political influence of any importance. The northwest (including Westphalia, Lower Saxony, and parts of Hanover) developed a system of medium-to-large holdings, yet with many peasant proprietorships. From Brandenburg eastward, however, — and especially in the Prussian provinces of East Prussia, West Prussia, Posen, and Pomerania, — practically all of the land was long ago gathered into great estates, and most of the people are landless, wage-earning agricultural laborers. The larger part of German agricultural land is not contained in the great estates of the north and east, and the national policy which is most profitable for the owners of these estates is not necessarily advantageous for the country's agricultural interests as a whole. Still less is it necessarily advantageous for the people generally. For forty years, however, the ultra-conservative, privileged, haughty, and oppressive landed aristocracy of Prussia held a rod of iron over the industrial classes, and over the government itself. When Chancellor Caprivi reduced the protective duties on imports of grain, these landed magnates demanded and obtained his dismissal; and in 1902 they brought about a restoration of such duties on foodstuffs as would keep prices of their own products at a high level. For decades these Agrarians, or "Junkers," supplied practically all the officers of the army and navy, and almost monopolized the civil offices as well. If Prussia ruled Germany, the Junkers ruled Prussia, and through it the Empire itself. They were a main prop of the Hohenzollern dynasty and of its autocratic, irresponsible system of government.[1]

Kultur. — Still another foundation stone of German autocracy has been the concept and influence of *Kultur*. This term, although constantly recurring in the discussions of the war period, practically defies definition. The English word "culture"

Germany and the Next War, trans. by A. H. Powles (New York, 1914). See also Baron Beyens, *Germany before the War*, trans. by P. V. Cohn (London, 1916), Chap. iii, and M. Smith, *Militarism and Statecraft* (New York, 1918), 171–200.

[1] On German agrarian history in the nineteenth century see Ogg, *Economic Development of Modern Europe*, Chap. ix (bibliography, pp. 210–211).

is too narrow to be considered an equivalent; the word "civilization" is somewhat too broad. The term includes not only learning in the ordinary sense, but attitude, spirit, temperament, ambition, achievement, purpose. The concepts involved in it have important political bearings for several reasons. In the first place, *Kultur* was state-made. It was, in the German view, the highest product of the schools and the universities, all of which were completely controlled by the state. In the second place, it was inextricably linked to militarism. The union of culture and militarism was the very bedrock of German education. Furthermore, it was not personal, but national. The nation created and propagated it, and all the people shared in it. "They have all had it at the same school. And it is all the same brand of culture, because no other is taught. It is the culture with which the government wishes its citizens to be equipped. That is why all Germans tend not only to know the same facts, . . . but to have a similar outlook on life and similar opinions about Goethe, Shakespeare, and the German navy. Culture, like military service, is a part of the state machinery."[1] Being a national rather than a mere personal possession, *Kultur* was systematically and deliberately handed on by the state from generation to generation, ready for use in whatever manner the state should desire and direct. It was an integral body of ideas and attitudes, which went steadily forward in lines of entire unity and self-consistency.

Finally, it maintained itself, under the guidance of the state, by ceaseless struggle. As German scholars and statesmen looked into the future they saw nothing but conflict — perpetual conflict between rival national "cultures," each seeking to crush out its competitors. No amalgamation, no real amity, no compromise even, was possible. "In the struggle between nationalities," writes Prince von Bülow, "one nation is the hammer and the other is the anvil; one is the victor and the other the vanquished. It is a law of life and development in history that when two national civilizations meet they fight for supremacy."[2] And the thought was that they fight not alone with the pen but with the sword. Every culture considers itself superior; only force can settle the issue. "A Luther and a Goethe may be the puppets pitted in a contest of culture against Maeterlinck and Victor Hugo. But it is Krupp and Zeppelin and the War-Lord that pull the strings."

[1] A. E. Zimmern, *Nationality and Government* (New York, 1918), 7.
[2] *Imperial Germany*, trans. by M. A. Lewenz (New York, 1914), 245.

Kultur as the Germans developed it thus became a mighty bulwark of autocracy. It owed its origin and character to absolutist state control; it was systematically employed to promote the unity of the nation and to stimulate pride in and loyalty to the omnipotent state; it was at once the cause and the chief support of a policy of domination and aggression toward other nations. Its peculiar effectiveness was derived largely from the people's ingrained habit of obedience, bred, in part, of centuries of experience when security depended absolutely upon the allegiance of the vassal to his lord, and when the economic ties of serfdom bound the peasants almost irrevocably to their masters — bred also, in part, of Bismarckian doctrine and practice, and again, in part, of the patriotism and pride that laid hold upon the German mind in the great era of unification and expansion.[1]

The Party Situation to 1914: General Aspects. — A final condition which contributed, negatively yet powerfully, to the perpetuation of the autocratic régime was the inability of the liberal and discontented forces to come together in support of a plan of reform. "It will be recalled," said a writer a few years ago, "that in England the first triumph of democracy came as a result of a combination of the middle and working classes, who forced through the reform bill of 1832; in France a similar combination succeeded in the revolution of 1839. History has proved that it takes two classes out of power to cope successfully with one class in power. In Germany the working classes have continually refused to combine with the middle classes against the intrenched aristocracy, on the ground that the middle classes would reap the benefit, as in England in 1832 and in France in 1830. Although the middle classes are opposed to the autocratic régime, they have consistently refused to combine with the workingmen to overthrow it, because they fear that the latter, who are largely Socialists, might endeavor to establish a socialistic republic, as was attempted in France in 1848 and in the Commune of 1871. Its opponents being thus divided, the autocratic

[1] Two expositions of *Kultur* by German writers are E. Tröltsch, "The Spirit of German Kultur," in *Modern Germany in Relation to the Great War* (New York, 1915), and K. Francke, *Glimpses of Modern German Culture* (New York, 1898). A valuable compilation of typical extracts from original sources revealing the German spirit is *Conquest and Kultur*, published in three parts by the U. S. Committee on Public Information (Washington, 1917). An exposition by a fairminded English writer is W. H. Dawson, *What is Wrong with Germany?* (New York, 1915). In this connection may be mentioned J. W. Gerard, *My Four Years in Germany* (New York, 1917). There is no better brief presentation of the subject than Zimmern, *Nationality and Government*, Chap. i.

system, supported by the landed aristocracy, or Junkers, has been able to maintain itself without serious difficulty."[1]

This leads us to a brief inquiry into the history and nature of political parties and party groups in the Empire. The first fact that stands out is that while political life was in many respects intense, parties as such were of less *governmental* importance than in England, France, or Italy. The reason is obvious. In the countries mentioned public policy is controlled by the people — and by the people organized in parties; government, as has been pointed out, is government *by party*. In the Germany of pre-war days the people did not control. For purposes of propaganda or self-protection they grouped themselves in parties; but these parties did not, as such, formulate and carry out public policy. Government was above party, not by party. Certain party groups lent the Emperor fairly consistent support, but it was not they as such that mapped out policy, executed it, and bore responsibility for it. Their part was only to suggest, or at the most to criticize. The true functions of party can be developed only under a popular form of government.[2]

A second fact is that Germany had no bi-party system, but rather a multiplicity of parties and party groups, so that, as in France and Italy, no one party was ever able to command a majority in the popular assembly. There was no cabinet system of government, and the tenure of the Chancellor and ministers was in no wise directly dependent upon the maintenance of any particular party majority in the Reichstag. Practically, of course, the government must have sufficient support there to insure the enactment of its budgets and of its legislative proposals. To be effective and trustworthy, this support must be organized, and hence, in practice, there was always a recognized "government majority." Party division, however, was carried so far that this majority must at all times be composed of two or three groups, more or less precariously united in a *bloc*. Thus Bismarck at one time governed with the combined aid of the Conservatives, Free Conservatives, and National Liberals, and von Bülow worked first with a "Blue-Black" (Conservative-Center) *bloc*, and later with a similar affiliation of Conservatives and Liberals.

[1] Schapiro, *Modern and Contemporary European History*, 283.

[2] See Prince von Bülow's frank discussion of the contrast between party responsibility in states ruled by parliaments and party irresponsibility in Germany, *Imperial Germany*, 150–151.

A third fact is that German parties were exceptionally "particularistic;" that is, they were not broadly national, drawing support from all parts of the country and from all classes of people, but were constituted, rather, on lines of race, section, and class. There were several minor parties in the newer portions of Prussia, and of the Empire, which were preëminently of this character. Thus the Guelfs, or *Hanoverische Rechtspartei*, existed to voice protest against the absorption of the kingdom of Hanover into Prussia in 1866; the Danes demanded the cession of Danish-speaking Schleswig to Denmark; the Poles comprised the Slavic voters of the provinces of West Prussia, Posen, and Silesia, whose representatives in the Reichstag were expected to make continual protest against Prussia's annexation of the Polish territories and against the ruthless attempts to Germanize the subject population; the Alsatians similarly protested against the incorporation of Alsace-Lorraine into the Empire, and demanded complete autonomy, so long as separation could not be obtained. The Antisemites comprised a group formed in 1879, on a somewhat different basis, with a view to curbing Jewish influence in politics and finance. But the greater parties were also far less coextensive with national boundaries, and far less representative of all elements of society, than are the parties of England, France, or the United States. Only one, the Social Democratic party, could lay claim to substantial strength throughout the entire Empire; and even it was, in the first place, a *class* party, to which few people besides workingmen belonged, and in the second place, a party whose support was drawn almost wholly from the cities.

Party Development: the Older Groups. — The party situation as it had taken shape by 1914 resulted from the gradual disintegration of two great political groups which included most of the people of Prussia when Bismarck entered upon his ministry; and the parties of the Empire and of the Prussian kingdom were, for all practical purposes, identical. The two original Prussian groups were the Conservatives and the *Fortschritt*, or Progressives. From the revolution of 1848 to the war with Austria in 1866 the former, which was preëminently the party of the clergy and of the landed aristocracy of the northern and eastern parts of the kingdom, completely dominated the government and the army. Following the triumph over Austria, however, Conservative power declined, and the long process of party dissolution and realignment set in by which German political life was brought to the confused condition in which it was found

at the opening of the Great War. To begin with, each of the two original parties broke into two distinct groups. From the Conservatives sprang the *Frei Conservativen*, or Free Conservatives; from the *Fortschritt*, the *National-Liberal-Partei*, or National Liberals. In the one case the new group drew off the more advanced elements of the old one, in the other, the more moderate; so that, in the order of radicalism, the parties of the decade following 1866 were the Conservatives, the Free Conservatives, the National Liberals, and the new *Fortschritt*, or Radicals. Among these four groups Bismarck was able to win for his policy of German unification the support of the two most moderate, that is to say, the second and third. The Conservatives clung to the particularistic régime of earlier days, and the genius of "blood and iron" broke definitely with them in 1866. The Free Conservatives included at the outset simply those elements of the original Conservative party who were willing to follow Bismarck.

Similarly among the Progressives there was division upon the attitude to be taken toward the Bismarckian program. The more radical wing of the party, *i.e.*, that which maintained the name and the policies of the original *Fortschritt*, refused to abandon its opposition to militarism and monarchism, opposed the constitution of 1867 for its illiberality, and withheld from Bismarck's government all substantial support. The larger portion of the party members, however, were willing to subordinate for a time to Bismarck's nationalizing projects the contest which the united *Fortschritt* had long been waging in behalf of constitutionalism. The party of no compromise was strongest in Berlin and the towns of East Prussia. It was almost exclusively Prussian. The National Liberals, on the contrary, early became an essentially German, rather than simply a Prussian, party. Even before 1871 they formed, in point both of numbers and of power, the preponderating party in both Prussia and the Confederation as a whole; and after 1871, when the Nationalists of the southern states cast in their lot with the National Liberals, the party's predominance was assured. Upon the National Liberals, as the party of unity and uniformity, Bismarck relied absolutely for support in the upbuilding of the Empire. It was only in 1878, after the party had lost control of the Reichstag, in consequence of the reaction against Liberalism which flowed from the great religious controversy known as the Kulturkampf, that the Chancellor was in a position to escape from his more or less uncomfortable dependence upon the Liberal alliance.

Party Development: the Newer Groups. — Meanwhile the field occupied by the various parties that have been named was cut into by a number of newly organized parties and groups. Most important among these were the Clericals, or Center, and the Social Democrats. The origins of the Center may be traced to a project formulated in December, 1870, to found a new party, a party which should be essentially Catholic, and which should have for its purpose the defense of society against radicalism, of the states against the central government, and of the schools against secularization. The party first gained strength in the Rhenish and Polish provinces of Prussia and in Bavaria, and in 1871 it was able to win a total of sixty seats in the Reichstag. Employed by the Catholic clergy during the ensuing decade to maintain the cause of the papacy against the machinations of Bismarck, the party early struck root deeply; and on account of the absolute identification in the public mind of its interests with the interests of the Catholic Church, insuring its preponderance in the states of the south, and also by reason of the fact that it was always more successful than any of its older rivals in maintaining compactness of organization, it became, and long remained, the strongest numerically of political groups in the Reichstag.

The Social Democratic party was founded in 1869 under the leadership of Wilhelm Liebknecht and August Bebel. In 1863 there had been organized at Leipzig, under the inspiration of Ferdinand Lassalle, a Universal German Workingman's Association. The two bodies were for a time keen rivals, but at a congress held at Gotha, in May, 1875, they (together with a number of other socialistic societies) were merged in one organization, which has continued to this day to be known as the Social Democratic party. The development of socialism in the Empire between 1870 and 1880 was phenomenal. At the parliamentary elections of 1871 the Social Democratic vote was 124,655 (three per cent of the total), and two Social Democrats were returned to the Reichstag. In 1874 the popular vote was 351,952, and nine members were elected; in 1877 it was 493,288, and twelve candidates were successful. Emperor William I and his Chancellor, Bismarck, as indeed the governing and well-to-do classes generally, viewed the progress of the movement with frankly avowed apprehension. Most of the great projects of the Imperial government were opposed by the Social Democrats, and the members of the party were charged with being enemies of the entire existing order, and even of civilization itself. Two

attempts in 1878 upon the life of the Emperor, made by men who were socialists, but disavowed by the socialists as a body, gave the authorities an opporunity to enter upon a campaign of socialist repression, and from 1878 to 1890 stringent anti-socialist legislation was on the statute-book and was vigorously enforced. At the same time that effort was being made to stamp out socialist propaganda, a remarkable series of social reforms was undertaken, with the purpose not only of promoting the public well-being, but of cutting the ground from under the socialists' feet, or, as some one has observed, of "curing the Empire of socialism by inoculation." The most important steps taken in this direction were the introduction of sickness insurance in 1883, of accident insurance in 1884, and of old-age and invalidity insurance in 1889.[1]

For a time the government's measures seemed to accomplish their purpose, and the official press loudly proclaimed that socialism in Germany was extinct. In reality, however, the cult thrived on persecution. In the hour of Bismarck's apparent triumph socialist ideas were being propagated covertly in every corner of the Empire. A party organ known as the *Social Democrat* was published in Switzerland, and thousands of copies found their way every week across the border and were passed from hand to hand among earnest readers and converts. A compact organization was maintained, a treasury was established and kept well filled, and long afterwards the Social Democrats were accustomed to assert, with apparent truth, that they owed their excellent organization in no small measure to the Bismarckian era of repression. At the elections of 1878 the party cast only 437,158 votes; but in 1884 its vote was 549,990 (9.7 per cent of the whole), and the contingent of representatives returned to the Reichstag numbered twenty-four. In 1890 the socialist vote attained the enormous total of 1,427,298 (19.7 per cent of the whole), and the number of representatives was increased to thirty-five. Repression was manifestly a failure, and in the year mentioned the Reichstag, with the sanction of the new emperor, William II, wisely declined to renew the proscriptive statute. Thereafter, development went on even more rapidly. In 1893 the popular vote was 1,876,738, and the quota of elected representatives was forty-four; in 1896 the vote was slightly over two millions, and the quota was fifty-seven; in 1903 the vote went beyond three millions (twenty-four per cent

[1] Ogg, *Economic Development of Modern Europe*, Chap. xxiv; W. H. Dawson, *Social Insurance in Germany*, 1883–1911 (London, 1912).

of the total, and larger than that of any other one party), and the quota was increased to seventy-nine.[1]

The Reichstag Elections of 1907 and 1912. — The chancellorship of Caprivi (1890–94) brought the government into a position where it was compelled to rely for support in the Reichstag upon a coalition of the Conservatives and Clericals, popularly known (from the party colors) as the "Blue-Black *bloc*"; and this situation continued through the chancellorship of Hohenlohe-Schillingsfürst (1894–1900) and well into that of von Bülow (1900–09). The elections of 1903, indeed, reduced the *bloc* to a majority of one; but by being able to count on the support of the National Liberals, and by astutely playing off the opposing elements, von Bülow was still able to get what he wanted. The elections of January, 1907, brought on by a dissolution of the Reichstag after the refusal of that body to vote the government's colonial estimates, drew interest mainly from the continued show of strength by the Center and the falling off of the Social Democratic quota. While hardly in a position to get on without Clerical support, the government had, by 1907, grown tired of the hard bargains which the party drove for the votes that it commanded, and would have been willing to see the Center's power reduced. Not only, however, did the party not lose seats by this contest; it gained two. On the other hand, there was compensation for

[1] German party history during the period 1871–94 is sketched in Lowell, *Governments and Parties*, II, Chap. vii. Systematic party histories include C. Grotewald, *Die Parteien des deutschen Reichstags:* Band I, *Der Politik des deutschen Reiches in Einzeldarstellungen* (Leipzig, 1908); O. Stillich, *Die politischen Parteien in Deutschland;* Band I, *Die Konservativen* (Leipzig, 1908), Band II, *Der Liberalismus* (Leipzig, 1911); and F. Wegener, *Die deutschkonservative Partei und ihre Aufgaben für die Gegenwart* (Berlin, 1908). The rise of the Center is well described in L. Hahn, *Geschichte des Kulturkampfes* (Berlin, 1881); and a valuable study is L. Goetze, *Das Zentrum, eine Konfessionelle Partie; Beitrage zur seiner Geschichte* (Bonn, 1906). The best standard histories of the German Social Democracy are F. Mehring, *Geschichte der deutschen Sozialdemokratie*, 2 vols. (Stuttgart, 1897–98), and E. Milhaud, *La démocratie socialiste allemande* (Paris, 1903). See also C. Andler, *Origines du socialisme d'état en Allemagne* (Paris, 1906); E. Kirkup, *History of Socialism* (London, 1906); W. Sombart, *Socialism and the Social Movement* (trans. from the 6th German ed. by M. Epstein (New York, 1909); R. T. Ely, *French and German Socialism in Modern Times* (New York, 1883); J. Spargo, *Karl Marx, his Life and Work* (New York, 1910); W. H. Dawson, *Bismarck and State Socialism* (London, 1891); *ibid., German Socialism and Ferdinand Lassalle* (London, 1899); A. Bebel, *Aus meinem Leben*, 3 vols. (1910–14), in abridged English trans., *My Life* (Chicago, 1912). F. Salomon, *Die deutschen Parteiprogramme*, 2 vols. (Berlin, 1912), contains the platforms of German parties from 1845 to 1912. There is a short account in Ogg, *Economic Development of Modern Europe*, Chap. xxii (see bibliography, pp. 532–534). Two useful articles are: M. Caudel, "Les élections allemandes du 16 juin, 1898, et le nouveau Reichstag," in *Ann. de l'École Libre des Sci. Polit.*, Nov., 1898, and J. Hahn, "Une élection au Reichstag allemand," in *Ann. des Sci. Polit.*, Nov., 1903.

the government in the fact that the Social Democrats fell back. They polled 3,250,000 votes, as compared with 3,008,000 in 1903; but on account of the antiquated distribution of seats, the abnormal vote polled by other parties, and the unusual coöperation of the party groups opposed to the Social Democrats, their representation in the Reichstag was cut from 79 to 43.[1]

The period covered by the life of the Reichstag elected in 1907 drew its political importance chiefly from a prolonged struggle for the establishment of parliamentary government — a struggle which had its beginning, indeed, in the deadlock that led to the dissolution of 1906, which reached its climax in the fiscal debates of 1908–09,[2] and which during subsequent years gradually subsided, leaving, it must be added, both the status of parties and the constitutional order of the Empire very much as they were at the beginning. Somewhat before the dissolution of 1906, the Conservative-Center *bloc* practically broke up, and for a short time the government sought to work with a combination, commonly known as the "Bülow *bloc*," of the Conservatives and the Liberals. This grouping, however, was fundamentally unnatural, and in the course of the conflict over the government's proposed new taxes in 1908, the old alignment was revived.

The Reichstag of 1907 was dissolved at the close of its five-

[1] The number of votes cast was 10,857,000, of which government candidates received 4,962,000, and opposition candidates 5,895,000. The strength of the various elements in the Reichstag after the elections of 1903 and 1907 was as follows:

	1903	1907	Seats Gained	Seats Lost
Center	102	104	2	0
Conservatives	53	58	5	0
Free Conservatives	22	22	0	0
National Liberals	51	56	5	0
Social Democrats	79	43	0	36
Radicals	42	50	8	0
Antisemites and Economic Union	22	30	8	0
Poles	16	20	4	0
Liberal Union	10	13	3	0
Volkspartei (Democrats of South)	6	7	1	0
Alsatians	10	7	0	3
Guelfs or Hanoverians	5	1	0	4
Danes	1	1	0	0
Independents	0	7	7	0
Total	397	397	43	43

[2] See p. 705.

year period, and in January, 1912, a new chamber was elected, the thirteenth since the creation of the Empire. The contest was one of measures rather than of men, but it aroused extraordinary public interest. Broadly, the line was drawn between the government and the parties of the *bloc*, on the one hand, and the popular parties, especially the National Liberals, the Radicals, and the Social Democrats, on the other; and the issues were supplied by the spirit, purposes, and methods of Chancellor von Bethmann-Hollweg and his Conservative-Clerical allies. There was widespread complaint of the alleged reactionism of the government parties. They were held responsible for the fiscal reforms finally carried out in 1909, which imposed serious burdens on industry and commerce, while sparing land and invested capital; they were charged with re-establishing the yoke of the Catholic Center upon the Lutheran majority; and they were reproached for having failed to redeem their promise to liberalize the antiquated franchise arrangements of Prussia. The Conservatives, in particular, were attacked on the ground of their monopoly of patronage and of power. On the whole, however, the most important issue was the tariff. Discontent flowing from the high cost of living was general, and for a year the government had been besought by municipalities, workingmen's organizations, and political societies to take steps to reduce the duties on imported foodstuffs. The demand was in vain, and the country was given to understand by the Chancellor that the government, under Conservative-Agrarian mastery, would stand or fall with "protection for the nation's work" as its battle-cry. Upon this question the National Liberals, being protectionist by inclination, stood with the government; but the Radicals, the Social Democrats, and some of the minor groups assumed an attitude of clear-cut opposition.

The total number of candidates in the 397 districts was 1428. The Social Democrats — although only they — had a candidate in every constituency; the National Liberals had candidates in 200 constituencies, the Center in 183, the Radicals in 175, and the Conservatives in 132. A second ballot was necessary in 191 constituencies, or nearly one-half of the whole number. The results of the election justified the general expectation of observers that the Social Democrats would realize enormous gains. The appeal of von Bethmann-Hollweg for a united front against the Socialists had no such effect as did the similar appeal of von Bülow in 1907. The tactfulness and personal hold of the Chancellor were inferior to that of his predecessor, and the masses

were aroused in 1912 as they were not upon the earlier occasion. The results were as follows:

	Seats at Dissolution	Seats Won at Elections of 1912
Center	103	90
Conservatives	58	45
Free Conservatives	25	13
Social Democrats	53	110
National Liberals	51	44
Radicals	49	41
Poles	20	18
Antisemites and Economic Union	20	11
Guelfs or Hanoverians	1	5
Alsatians, Danes, and Independents	16	20
Total	397	397

Two of the three parties of the Left, *i.e.*, the National Liberals and the Radicals, suffered substantial losses, but the victory of the Social Democrats was so sweeping that the Left as a whole realized a net gain of forty-two seats.[1] On the other hand, the parties of the *bloc* lost heavily — in the aggregate, thirty-eight seats. The number of votes cast for candidates of the *bloc* was approximately 4,500,000; that for candidates of the Left, approximately 7,500,000.[2] In Berlin, five of whose six constituencies were already represented by Social Democrats, a mighty effort was made to carry the "Kaiser district," which contained the *Kaiserhof*, or Imperial residence, and the seat of the government itself. The attempt failed, but it was only at the second ballot, and by the slender margin of seven votes, that the Socialist candidate was defeated by his Radical opponent. As has been pointed out, the parties of the Left were entirely separate, and they were by no means always able to act together on a public question. The ideal voiced by Friedrich Naumann, "from Bassermann to Bebel," meaning that the National Liberals under the leadership of Bassermann should, through the medium of the Radicals, amalgamate for political purposes with the Social Democrats under Bebel, was never realized. None the less there was community of interest and policy, and the elections of 1912

[1] Many of the socialist victories were, of course, at the expense of the National Liberals and Radicals.

[2] The number of electors inscribed on the lists was 14,236,722. The number who actually voted was 12,188,337. The exact vote was: Social Democrats, 4,238,919; National Liberals, 1,671,297; Radicals, 1,556,549; Center, 2,012,990; Conservatives, 1,149,916.

made it possible for the first time for a combination of the three groups and their allies to outweigh decisively any combination which the parties of the *bloc* and their allies could oppose. Before the elections there was a clear government majority of eighty-nine; after them, an opposition majority of, at the least, fourteen. When, in February, 1912, the new Reichstag was convened dexterous "log-rolling" was required on the part of the Conservative-Clerical *bloc* to prevent the election of Bebel himself to the presidency of the chamber. As it was, a socialist was chosen first vice-president. The enormous popular vote rolled up by the socialists is to be accounted for not alone by the fact that the party had become the recognized channel for the expression of working-class discontent, but also by the fact that great numbers of men of the middle class voted with it as the most effective way of protesting against autocracy and militarism.[1]

Parties on the Eve of the Great War. — Without pursuing farther the intricate subject of party history, something may be said about the composition and character of parties in the years immediately preceding the Great War, and especially about the great organization which went under the name of the Social Democracy. The major parties were five in number; Conservative, Center, National Liberal, Radical, and Socialist. As has been explained, the Conservative party found its leadership and main strength among the great landholders of eastern and northeastern Prussia; its popular support came chiefly from agricultural wage-earners of these same sections and from public employees, including the railway operatives. The gravest abuse in connection with the conduct of campaigns and elections was the pressure which the government brought to bear upon the enormous official population to vote Conservative, or, in districts where there was no Conservative candidate, Centrist. This pressure was applied through the local bureaucratic organs, principally the *Landrath* of the *Kreis*,[2] who usually was a youthful official of noble origin, related to some important landed family, and a rigid Conservative. It has been estimated that official

[1] On the elections of 1907 see G. Isambert, "Le parti du centre en Allemagne et les élections de janvier-février, 1907," in *Ann. des Sci. Polit.*, Mar., 1907. On those of 1912 see G. Blondel, "Les élections au Reichstag et la situation nouvelle des partis," in *Le Correspondant*, Jan. 25, 1912; J. W. Jenks, "The German Elections," in *Rev. of Revs.*, Jan., 1912; A. Quist, "Les élections du Reichstag allemand," in *Rev. Socialiste*, Feb. 15, 1912; and W. Martin, "La crise constitutionnelle et politique en Allemagne," in *Rev. Polit. et Parl.*, Aug. 10, 1912. An excellent survey of the period 1906–11 is P. Matter, "D'un Reichstag à l'autre," in *Rev. des Sci. Polit.*, July–Aug., 1911.

[2] See p. 672.

influence controlled a million votes at every national election. Numerically small, the Conservative party steadily maintained its position as the most important of all; for it stood closest to the Prussian government, and it furnished the men who made the Imperial government what it was. Founded on the doctrine of authority as opposed to liberty, dedicated to the defense of the prerogatives of the king-emperor and the privileges of the nobility, it resolutely resisted every proposal for reform in the political system. It favored a high protective tariff on agricultural products, a larger navy, increased expenditure on the army, and colonial expansion; and for years an influential "Pan-German" element urged many of the measures for German aggrandizement abroad which eventually brought the Imperial régime to grief. Earlier opposition to Bismarck's policy of unification disappeared when the advantages of Imperial tariff legislation began to be clearly perceived.

The Center was the party of Catholicism. Founded upon an essentially religious basis, it always contained both aristocratic and popular elements, and was perhaps more representative of all classes of people in the Empire than any other party. Its leaders were largely drawn from the Catholic nobility of Silesia and Bavaria, and it found its chief support among the Catholic peasants of Bavaria and the Catholic workingmen of the Rhine provinces.[1] Geographically, its strength lay principally, therefore, in the south and southwest. The party had no clear-cut program. Its original purpose was largely attained when Bismarck was led to abandon his conflict with the Catholic Church; although the party was ever alert to defend Catholic interests, from whatever direction menaced. It actively combated socialism; and, with a view to winning the laboring classes from that creed, it, like the Catholic *Action Libérale* in France, steadily advocated social reform. Its liberalism, however, was guarded; and while the name which it bore, "Center," denotes a middle position between the conservative Right and the radical Left, the party commonly acted with the Conservatives, partly because of its own innate conservatism, partly because the interests of its membership were also to a considerable extent agricultural. A French observer said of the party in 1913: "It appears to-day much more in the light of a group of clever opportunists, who show a rare genius for defending the temporal interests of Catholicism, rather than a really idealistic party which is systematically

[1] The Empire contained in 1911 twenty-four million Catholics, as against forty million Lutherans and Evangelicals.

endeavoring to find a solution of the great international, political, and social problems of the moment."[1]

Just as Conservatism formed the party of the nobility and of agriculture, the Center the party of the Catholic Church, and Social Democracy the party of the industrial masses, National Liberalism formed the party of the middle classes, and especially of the industrial leaders and managers. This party found its strength therefore principally in the industrial districts of the center and west. Historically, it was the party of political reform; and in later years it put much emphasis on the abolition of three-class voting, the reapportionment of seats in the Reichstag, the restriction of clerical influence in education and government, and the suppression of government interference with the free exercise of the suffrage by Imperial and state employees. However, the party gave its best effort to the defense of its economic interests, and in this connection it particularly demanded the revision of the tariff downwards on agricultural products, although not, of course, on manufactured goods. It also supported armaments, colonial expansion, and a vigorous, if not indeed an aggressive, foreign policy; and the lords of industry who led the party bitterly resented the monopoly of civil offices and of command in the army and navy which the landed aristocrats of the Conservative groups enjoyed.

The Radicals, or Progressives, were also a middle-class, and largely industrial, party. Except on one matter, they differed from the National Liberals rather in degree than in principle. That matter was the tariff. They would have had the Empire abolish all protective duties — in other words, adopt the tariff policy of its great industrial rival, England. Like the National Liberals, they advocated reapportionment of seats, equal voting, and the suppression of clericalism; and they went farther by demanding a complete parliamentary system of government, and also the subordination of the military to the civil power. The party was not the tool of the great industries in any such degree as was the National Liberal organization; yet it was not a party of the masses in the sense in which that phrase can be applied to the Social Democracy.[2]

[1] H. Lichtenberger, *Germany and its Evolution in Modern Times* (New York, 1913), 185. See C. Bachem, *Politik und Geschichte der Zentrumspartei* (Cologne, 1918).

[2] Brief accounts of the parties in the years immediately preceding the war are Krüger, *Government and Politics of the German Empire*, Chap. xvii; Lichtenberger, *Germany and its Evolution in Modern Times*, Bk. II, Chap. v; Baron Beyens, *Germany before the War*, trans. by P. V. Cohn (London, 1916), Chap. iv; and B. von

The Social Democrats: Organization and Activities. — The first fact to be observed about the Social Democracy in the years immediately preceding the Great War is that the party, as such, was very much smaller than might be inferred from the number of votes polled by its candidates. Strictly, the membership included only those persons who paid party dues and obligated themselves to perform such services as the party demanded of them. In only six electoral districts in the Empire in 1909 did the membership reach thirty per cent of the Social Democratic vote cast; and the total membership of the party March 31, 1914, was but 1,085,905, including 174,754 women and perhaps an equal number of men under the voting age. The party's huge and rapidly growing popular vote arose largely from the fact that great numbers of middle-class Germans who cared little or nothing about the purely economic dogmas or the ultimate goal of socialism habitually supported Social Democratic candidates for the Reichstag as the most obvious and effective mode of rebuking an illiberal and unrepresentative government.

In organization the party was without a peer in continental Europe. Its supreme governing body was a congress composed of six delegates from each electoral district of the Empire, the Socialist members of the Reichstag, and the members of the party's executive committee. This congress met annually in some important city to hear reports of committees, to discuss party policies, to enforce party discipline, and to take action upon matters referred to it by local party organizations or by individual members. There was the utmost freedom of discussion, but the decisions reached were expected to be accepted by all members without equivocation or complaint. Between sessions the administrative work of the party was carried on by an executive committee of seven members, chosen by the congress and assisted by a staff of itinerant secretaries. Locally, the membership was organized in branches, which held meetings, instructed the youth in the tenets of the party, and in every possible way advanced the party's interests in the community. The activities of the party were varied and untiring. In 1910 over fourteen thousand meetings were held and over thirty-three million circulars and almost three million pamphlets were distributed. At campaign time voters were interviewed in person, and no workingman escaped the propagandists' attention. The party press included seventy-

Bülow, *Imperial Germany*, 163–247. For references on the Social Democrats see p. 702. A. Marvaud, "La presse politique allemande," in *Quest. Dipl. et Colon.*, Mar. 16 and Apr. 1, 1910, will be found of interest.

five daily newspapers, with a circulation of 1,100,000 copies; *Vorwärts*, the central organ, with a daily circulation of 139,000; the weekly *Die Neue Zeit*, with a circulation of 475,000; the humorous *Wahre Jacob*, with 250,000 weekly; and a propagandist paper for women, circulating 37,000 copies fortnightly. The party had two hundred central circulating libraries and three hundred and seventy-seven branches.

The Social Democrats: Doctrines and Policies. — In the main, this organization was given the party by the first annual congress convened after the discontinuance of the government's repressive policy, that held at Halle in 1890. The same gathering worked over, also, the party's principles and set on foot a movement for the revision of the program promulgated at Gotha fifteen years earlier. The outcome was the adoption by the next congress, at Erfurt in 1891, of a freshly drawn program, mainly Marxist in content and spirit, and with all traces of anarchistic influence eliminated; and with only slight modifications the Erfurt Program remained in 1914 the formal statement of the party's creed.[1] From time to time, as new issues arose, it required interpretation or amplification by pronouncements of the annual congress. But from the first it contained the fundamentals.

The essential objects of the Social Democracy are set forth in the instrument as follows: "Nothing but the conversion of capitalistic private ownership of the means of production — the earth and its fruits, mines and quarries, raw material, tools and machines, means of exchange — into social ownership, and the substitution of socialist production, carried on by and for society in the place of the present production of commodities of exchange, can effect such a revolution that, instead of the large industries and the steadily growing capacities of common production being, as hitherto, a source of misery and oppression to the classes whom they have despoiled, they may become a source of the highest well-being and of perfect harmony. This social transformation means the emancipation, not merely of the proletariat, but of the entire human race which suffers under the present conditions. But it can only be the work of the laboring class, because all other classes, in spite of their mutual conflicting interests, stand on the ground of private property in the

[1] K. Kautsky, *Das Erfurter Programm* (8th ed., Stuttgart, 1907). An English version is printed in S. P. Orth, *Socialism and Democracy in Europe* (New York, 1913), 298–301. Compare the Election Address of the Social Democrats at the elections of 1912, *ibid.*, 303–307.

means of production, and have as their common aim the maintenance of the bases of the existing society. The struggle of the working class against capitalistic exploitation is of necessity a political struggle. The working class cannot conduct its economic struggle, and cannot develop its economic organization, without political rights. . . . To shape this struggle of the working class into a conscious and united one, and to point out to it its inevitable goal, this is the task of the Social Democratic party. . . . The German Social Democrats are not, therefore, fighting for new class privileges and rights, but for the abolition of class government and even of classes themselves, and for universal equality in rights and duties, without distinction of sex or rank. Holding these views, they are fighting not merely against the exploitation and oppression of the wage-earners in the existing social order, but against every kind of exploitation and oppression, whether directed against class, party, sex, or race."

The more specific demands of the party, as enumerated in the Program, may be summarized as follows:

1. Universal, equal, and direct suffrage by ballot in all elections for all subjects of the Empire over twenty years of age, without distinction of sex; proportional representation; biennial elections to the Reichstag; payment of representatives.

2. Direct legislation by the people through the use of the right of initiative and of veto; self-government by the people in Empire, state, province, and commune; an annual vote of taxes.

3. Universal military training; substitution of a militia for a standing army; decision of questions of peace and war by the Reichstag; settlement of all international disputes by arbitration.

4. Abolition of all laws restricting freedom of speech and the right of public assembly.

5. Abolition of all laws that put women, whether in a private or public capacity, at a disadvantage in comparison with men.

6. Declaration that religion is a private matter; discontinuance of all expenditure of public funds for ecclesiastical purposes.

7. Secularization of education; compulsory attendance at public schools; free education, free supply of educational apparatus, and free maintenance of children in schools and of such students in higher institutions as prove themselves fitted for higher education.

8. Free administration of the law by judges elected by the

people; compensation to persons unjustly accused, imprisoned, or condemned; abolition of capital punishment.

9. Free medical treatment, including medicine, and free burial.

10. Income, property, and inheritance taxes to meet all public expenses that are now met by taxation; abolition of all indirect taxation, customs duties, and other measures which sacrifice the interests of the people at large to those of a small minority.

11. A national and international system of protection of labor on the basis of a working day of not more than eight hours, the prohibition of the employment of children under fourteen years of age, and the prohibition of night work, except where absolutely necessary; supervision of all industrial establishments and regulation of the conditions of labor by government departments and bureaus; confirmation of the rights of laboring men to form organizations.

Internal Party Differences: Revisionism. — The Program, it will be observed, consisted of two parts — first, a re-statement of Marxian economics and, second, an enumeration of specific and practical objects to be attained, not in all instances as ends within themselves, but as contributions toward the realization of the ultimate ideal. Much stress was placed upon political action; and if any one entertained a doubt that German socialism proposed to remain in politics, the uncertainty must have been dispelled by the promulgation of this platform. From 1891 — and especially after 1900 — the main issue in the shaping of socialist policy in Germany was the extent to which theoretic and remote aims should be subordinated to practical and immediate ends. There was at all times an element which had its eyes fixed on the ultimate socialistic goal. To this element the things that happened until that goal should be attained did not greatly matter. The supreme danger, it felt, was that men would set out to be socialists and end by being mere social reformers. This element clung to the old articles of faith — the abolition of class government and of classes themselves, the suppression of every kind of exploitation of labor and oppression of men, the overthrow of capitalism and of everything for which it stands, and the inauguration of an economic system under which the production and distribution of goods should be controlled exclusively by the state.

A quarter of a century ago, however, an element appeared in the party which viewed matters differently. Shortly after the

general election of 1897, in which the Social Democrats suffered serious reverses, Edward Bernstein, the literary executor of Engels, published in *Die Neue Zeit* a series of articles, under the title *Probleme des Sozialismus*, renouncing revolution and urging that "the movement is everything, the goal is nothing." These articles gave forceful expression to the thought of a growing section of the party, and at the congresses of 1898 and 1899 the proposals which they contained were made the principal subjects of debate. The question was whether the party should recast its platform and eliminate the doctrine of cataclysmic revolutionary expropriation which it had taken over from Marx, even as at an earlier time it had ejected the last trace of anarchism, or should stand inflexibly upon the ground which it hitherto had occupied. Bernstein led the "revisionists," Karl Kautsky, editor of *Die Neue Zeit*, led the old-line Marxists. Bebel, who since the death of Wilhelm Liebknecht in 1900, had been the party's principal leader, inclined against the revisionists, but he directed his efforts mainly to averting an open breach in the party ranks. Bernstein wrote a book explaining and defending the revisionist position; Kautsky wrote one in sharp reply.[1]

Year after year the question was agitated, in the annual congresses and in the party press. At the Lübeck congress of 1901 revisionism was formally condemned as a heresy, and for a time it seemed that its program would be permanently repudiated. The loss of one half of the party's seats in the Reichstag at the elections of 1907 had, however, a chastening effect, and thereafter the scale turned in favor of the new policy. No formal modification of the Erfurt Program took place. But there was a decided tendency to speak softly of theoretic revolutionism and to direct effort rather to securing the ends of Social Democracy by a series of partial, practical reforms. By 1914 some five sections were clearly discernible in the party: (1) the Extremists — represented in the Reichstag by Karl Liebknecht, and among women by Rosa Luxemburg — who still advocated class-war and deprecated coöperation with non-socialist parties; (2) the Left Center — represented in the Reichstag by Hugo Haase and Georg Lebedour and among writers by Karl Kautsky and Heinrich Cunow — who also disapproved coöperation with non-socialist bodies, but believed in parliamentary action;

[1] Bernstein's volume, which was written in England, is *Die Voraussetzung des Sozialismus und die Aufgaben der Sozialdemokratie* (Stuttgart, 1899). It has been published, in translation by E. C. Harvey, under the title *Evolutionary Socialism; a Criticism and an Affirmation* (London, 1909). Kautsky's volume is *Bernstein und das sozialdemokratische Programm; eine Antikritik* (Stuttgart, 1899).

(3) the Right Center — led by Philipp Scheidemann — which theoretically held to the traditional party program, yet in fact strongly inclined to revisionism; (4) the Revisionists, led by Bernstein and Eduard David; and (5) the Imperial Socialists — represented by Wolfgang Heine and Edmund Fischer — who supported the demand for a large army, a strong navy, and an aggressive colonial and commercial policy.[1]

All in all, the party, while nominally revolutionary, was in fact a very orderly organization, whose immediate program was so moderate as to command support among vast numbers of people who did not bear the party label. The party grew ever more tolerant and opportunist. Instead of opposing reforms undertaken on the basis of existing institutions, as it once did, in the hope of bringing about the establishment of a socialistic state by a single grand *coup*, it worked for such reforms as were felt to be attainable and contented itself with proclaiming only occasionally, and even only incidentally, its ultimate ideal. The state as at present constituted became a means of removing evils, not itself an evil to be removed. Perhaps we may say that the party was at once reforming and revolutionary — reforming in that the great majority of its members definitely repudiated violence and forcible measures and advocated a positive, constructive policy of social amelioration; and yet revolutionary, because, after all, it clung to its faith in a radical transformation of society which should involve the end of social classes, the displacement of capitalist production, and the cessation of the exploitation of labor by the economically powerful.[2]

The Social Democrats and the Government. — The German Social Democracy was by 1914 essentially political. In accordance with Lassalle's dictum, "Democracy, the universal ballot, is the laboring man's hope," it made its immediate issue the establishment of universal suffrage and the modernization in other respects of the electoral arrangements of Empire, states, and municipalities. "Marx," wrote a foreign observer in 1913, "is a tradition, democracy is an issue." Once the party's representatives were present in the Reichstag merely to make the cause of the workingman heard, to protest, to obstruct, and to embarrass the government. Gradually, and not without criticism from the extremists, they became constructive legis-

[1] E. Bevan, *German Social Democracy during the War* (New York, 1919), 2–3.

[2] Lichtenberger, *Evolution of Modern Germany*, 172. The earlier history of the internal differences in the party is fully related in E. Milhaud, *La démocratie socialiste allemande* (Paris, 1893), 541–572.

lators, introducing bills, serving on committees, seeking and holding offices, and finally, after the elections of 1912, joining with the Radicals in assuming virtual leadership of the Reichstag itself. In many of the states, notably Bavaria, Baden, and Württemberg, they voted for budgets prepared by representatives of other parties, participated in court functions, and worked hand in hand, in campaigns and in local councils and diets, with Radical, and even National Liberal, organizations.

So far as the Empire as a whole and the kingdom of Prussia were concerned, the socialists advanced farther to meet the government than the government to meet the socialists. The belief was still prevalent in official circles that the Social Democrats were enemies of the monarchy and were conspiring its eventual overthrow. Hence, socialists were rigorously excluded from all positions of trust and honor at the disposal, directly or indirectly, of the government. No socialist was ever tendered a ministerial or other public office, and the ban was extended to judicial offices, professorships in the universities, pastorates in the state church, and teaching appointments in the public schools. The tension was less pronounced in the states of the south than in Prussia, but it existed in some degree everywhere.[1]

[1] In addition to the references cited on p. 689, the reader may consult R. C. K. Ensor [ed.], *Modern Socialism* (2d ed., London, 1907); V. G. Simkhovich, *Marxism vs. Socialism* (New York, 1913); Orth, *Socialism and Democracy in Europe*, Chaps. vii–viii; W. E. Walling, "The New Revisionism in Germany," in *Internat. Soc. Rev.*, Nov., 1909; J. E. Barker, *Modern Germany; her Political and Economic Problems* (new ed., London, 1912), Chaps. xviii–xix; and C. J. H. Hayes, "The History of German Socialism Reconsidered," in *Amer. Hist. Rev.*, Oct., 1917.

CHAPTER XXXVIII

THE WAR-TIME MOVEMENT FOR POLITICAL REFORM AND THE REVOLUTION OF 1918

Demand for Political Reconstruction prior to 1914. — The German governmental system as described in preceding chapters was bolstered up by many powerful influences, but it by no means met the approval of all elements of the people. The liberalism of 1848, which looked toward manhood suffrage, responsible ministers, limited monarchy, and guarantees of individual liberty, never wholly died out. In their official program, adopted at Erfurt in 1891, the Social Democrats called for a long and remarkable list of political reforms: universal, equal, and direct suffrage by ballot in all elections for all subjects of the Empire over twenty years of age, without distinction of sex; proportional representation; biennial elections to the Reichstag; an annual vote of taxes; direct legislation by the people by means of the initiative and the referendum; decision of questions of peace and war by the Reichstag; and "self-government by the people in Empire, state, province, and commune." Furthermore, for many years prior to the Great War the moderate, middle-class parties likewise advocated the abolition of the Prussian three-class electoral system, periodic reapportionment of seats, and the establishment of ministerial responsibility to the Reichstag.

After 1900 discussion in liberal circles centered mainly around two proposed reforms: the establishment of ministerial responsibility, especially as applied to the Chancellor, and the abolition of the Prussian three-class system. The first question was brought unexpectedly to the fore in the autumn of 1908 by the famous *Daily Telegraph* incident. At a moment when the international situation was exceptionally tense over the Casablanca episode[1] the London *Daily Telegraph* published an account of an interview in which the Kaiser declared that while the prevailing sentiment among large sections of the middle and

[1] Precipitated by the arrest of some German deserters from the French Foreign Legion at Casablanca, in Morocco. *Annual Register* (1908), 298–299.

lower classes of his own people was not friendly to England, the German government was well disposed and had actively befriended that country during the South African war. The interview was a masterpiece of indiscretion, and it aroused a storm of disapprobation in Germany such as the Emperor had never before encountered. "A stranger," relates the American ambassador of the time, "might easily have inferred from the tide of public feeling that swept over the Empire that William II was about to be deposed. The serious journals were loud in their protests. The comic papers were remorseless in their caricatures. One would have supposed that there was no law in Germany against *lèse majesté*." [1]

At the Wilhelmstrasse it was revealed that the manuscript of the interview had been submitted before publication to the Chancellor, but had been returned to its author unread. For this negligence Prince von Bülow was duly apologetic. When, however, the Emperor refused to accept his resignation the minister did not refrain from throwing the final burden on his master by pledging that while he remained Chancellor such personal interference in the conduct of foreign affairs would not be allowed to occur again. "The perception," the Chancellor declared in the Reichstag, "that the publication of these conversations in England has not had the effect the Kaiser wished, and in our own country has caused profound agitation and painful regret, will . . . lead the Kaiser for the future, in private conversation also, to maintain the reserve that is equally indispensable in the interest of a uniform policy and for the authority of the Crown. If it were not so, I could not, nor could my successor, bear the responsibility." Following this announcement, the *Official Gazette* stated that "His Majesty, while unaffected by public criticism which he regards as exaggerated, considers his most honorable Imperial task to consist in securing the stability of the policy of the Empire while adhering to the principle of constitutional responsibility. The Kaiser accordingly indorses the statements of the Imperial Chancellor in the Reichstag, and assures Prince von Bülow of his continued confidence." Chastened by the protests of his long-suffering people, the lordly monarch thus promised to mend his ways, when a less conciliatory policy might have produced revolution. The popular victory — if such it be considered — was, however, hollow. The Reichstag gained no new power; "constitutional responsibility" continued to mean responsibility

[1] Hill, *Impressions of the Kaiser*, 112.

to the Emperor only; the Chancellor was still to be merely the Emperor's "other self"; the régime of personal diplomacy was not ended, and the issues of war and peace still lay absolutely in the hands of the ill-balanced, irresponsible head of the Prussianized Empire.[1]

The issue was kept alive by a prolonged controversy between the Chancellor and the Reichstag over financial reform. Von Bülow proposed to meet recurring deficits by a new inheritance tax, arranged to fall mainly on the landed and capitalist classes. Rather than approve the plan, the Conservatives deserted their newly acquired allies, the National Liberals, and resumed working relations with the Center; and the revived Blue-Black *bloc* thwarted the reform. The resignation of the Chancellor followed; but, as has been pointed out elsewhere, the act involved no recognition of responsibility to the Reichstag. Von Bülow retired partly because he was unwilling to go on without the tax upon which he had set his heart, but also partly, and perhaps mainly, because he felt that his relations with the Emperor could never again be what they had been before the *Daily Telegraph* affair. During the fiscal controversy the principle of ministerial responsibility was strongly asserted on the floor of the Reichstag. But the new Chancellor, von Bethmann-Hollweg, promptly and fully repudiated it. "A Chancellor dependent only upon the Emperor and the king of Prussia," he declared, "is the necessary counterpoise to the freest of electoral laws, devised by Bismarck on the supposition that the Bundesrath and the Imperial Chancellor would maintain their independence."

In 1913 the question was brought to the front again by the Saverne—or, to use the German name, Zabern—incident. During a street disturbance in the Alsatian garrison town of Zabern a swaggering lieutenant slashed an unoffending crippled cobbler with his sword. The affair brought the civil and military authorities of Alsace-Lorraine into conflict and aroused indignation among non-militaristic people throughout the Empire. In the Reichstag the Socialists and Radicals, who were in the majority, bitterly assailed the government; and when the Chancellor announced that the action of the troops would be upheld, they carried a vote of "no confidence" by the heavy majority of 293 to 54. The only result was that the Emperor

[1] On the *Daily Telegraph* episode see *Annual Register* (1908), 299–302, and Shaw, *William of Germany*, 304–308. The complete text of the interview is printed in Hill, *Impressions of the Kaiser*, 329–335.

agreed to order the removal of the offending regiment from Zabern. In a stormy sitting the Reichstag demanded the Chancellor's resignation. But that official declined to recognize that he was in any way responsible to the Reichstag, and coolly declared that he would remain in office as long as the Emperor wished to retain him. A resolution withholding approval of the budget until the resignation should be submitted was narrowly lost; and the matter ended in the usual government victory.[1]

The movement for reform of the antiquated Prussian electoral system has been described elsewhere,[2] and hence calls for no comment here, except to point out that all important proposals on the subject that got before the Landtag up to 1910 were private members' resolutions, foredoomed to failure, and that the government bill of 1910 was obviously drawn in the hope that it would be defeated, but also in the confidence that, if passed, it would not seriously weaken the citadel of aristocracy and reactionism. The parties that wanted real reform opposed the bill because it did not go far enough; the conservative elements opposed it because it went too far. Under these circumstances, its failure was inevitable.

Discussion of Reform during the War. — Notwithstanding these and many more reverses, Germany seemed in 1914 to be slowly advancing toward a moderate political reconstruction. Then came the war, whose political effect could not be foretold, beyond the probability that if a decisive victory were quickly attained the autocratic, militaristic forces would become yet more solidly intrenched, while a prolonged and indecisive contest, and especially a German defeat, would give liberalism a chance to express itself as perhaps never before. Events worked out substantially on these lines. The first effect of the conflict was to stabilize the political system and fortify the existing government. Criticism and complaint suddenly ceased, and, to the astonishment of many people in Germany as well as elsewhere, the Social Democrats, with some notable exceptions, voted for the early war budgets and in other ways gave their support.[3] In 1915 some restlessness appeared, and at the beginning of 1916 Chancellor von Bethmann-Hollweg deemed it

[1] The Zabern affair is briefly described in W. S. Davis, *The Roots of the War* (New York, 1918), 219–223, and more fully in C. D. Hazen, *Alsace-Lorraine under German Rule* (New York, 1917), Chap. viii.

[2] See p. 663.

[3] The division which, however, soon arose in the socialist ranks, and the positions eventually assumed by the two wings of the party, will be described below. See pp. 713.

advisable to appease popular sentiment by promising electoral reform for Prussia, although it was not to be carried out until after the war.

Speaking broadly, both the Prussian and Imperial governments went along until 1917 with little change of personnel and character. Then, however, the scene began to shift rapidly. War-weariness had laid hold of the masses, and both peace propaganda and agitation for government reform got beyond control. Two events, chiefly, crystallized the popular opposition — the Russian revolution and entrance into the war by the United States. On the day before the tsar of Russia abdicated (March 15, 1917) Chancellor von Bethmann-Hollweg was driven to renew in the Landtag the promise of electoral reform, and was obliged to hear from the tribune the prediction of a socialist member that "a republic was a coming inevitable development in Germany." Two weeks later he said in the Reichstag that the promised reform must not be undertaken while millions of men were in the trenches. But this did not deter the chamber from creating (by a vote of 227 to 33) a special committee of twenty-eight members to consider constitutional reforms, as related not only to the Prussian electoral system but to reapportionment and ministerial responsibility in the Empire; and so stormy became the discussion that the Reichstag was prorogued for a month. In a rescript of April 7 the Emperor himself admitted the necessity of constitutional changes, but insisted that they must await the restoration of peace.

In the early summer of 1917 an acute political crisis arose. On July 6 the Center leader, Erzberger, delivered a sensational speech in the Reichstag Main Committee, attacking the Pan-German and anti-democratic groups and throwing the weight of his party on the side of the Social Democrats and Radicals in favor of "peace without annexations" and democratic constitutional reform. Confronted by a hostile *bloc*, the government was now forced to make some move that would at least seem to be a concession to the reform elements. A new pledge of Prussian electoral reform, to be carried out before the next elections, proved insufficient, and three days later Chancellor von Bethmann-Hollweg resigned, the scapegoat of a government which was trying to stem the tide of public disapproval without in any way departing from his policy. The new Chancellor, Dr. Georg Michaelis, was an inconspicuous bureaucrat, and obviously a puppet in the hands of the military leaders. His first utterances in the Reichstag were anxiously awaited

But they were evasive; and the year passed, with much discussion, but without definite progress. A "free committee," composed of seven members of the Reichstag (distributed among the five principal parties) and seven representatives of the Bundesrath, and presided over by the Chancellor, was called into being to discuss questions of policy relating to foreign affairs and the conduct of the war; but this resulted in no clear gain.[1] In October Michaelis was succeeded in the chancellorship by Count von Hertling, a Bavarian (the first of German chancellors who was not a Prussian); but, while the new official's choice was at first regarded as a concession to liberalism, no real reason for such a supposition subsequently appeared. During the winter of 1917–18 strikes were organized in Prussia as protests against the dilatory tactics of the government in dealing with electoral reform; but they were suppressed without result. In the spring of 1918 the movement seemed to go backward rather than forward. Inspired with fresh confidence by the humiliation of Russia in the Brest-Litovsk treaty and by the success of the new "drive" on the western front, the Prussian reactionaries repudiated the Emperor's pledges and carried, in the lower branch of the Landtag, by a vote of 235 to 183, a bill substituting an elaborate six-class electoral scheme for the promised plan of equal suffrage. Another straw which showed which way the wind was blowing was the dismissal, in July, of the foreign secretary, von Kuehlmann, for saying publicly that Germany could no longer hope for a military victory, followed by the appointment in his stead of the extreme Junker and notorious intriguer, Admiral von Hintze.

Political Changes in the Hour of Defeat — the Revolution of 1918. — The last chapter in the history of the reform movement, prior to the collapse of the Central Powers and the signing of the armistice of November 11, 1918, is the most curious of all. The tide of battle was now running strongly in favor of the Entente nations; German statesmen instinctively felt the end to be near; and the central feature of the constitutional discussion became the earnest, even frantic, effort of the Imperial authorities to convince the world, and especially President Wilson, that reforms were under way which would make the German government thoroughly representative of the people, if indeed it had not already acquired that character. The primary object, of course, was to persuade the American Executive that the urgent correspondence concerning peace which was about to begin was

[1] *London Times* (Weekly ed.), Aug. 31, 1917, p. 710.

with a government entirely different from that with which he had declared himself unwilling to treat. On August 24 the Emperor signed an act raising the membership of the Reichstag to 441, redistributing the seats on an approximate basis of one for each 200,000 inhabitants, and introducing proportional representation in a number of districts having more than one deputy.[1] In early September Chancellor von Hertling made a sensational speech before the ultra-conservative constitution committee of the Prussian House of Lords, ardently advocating electoral reform and in effect admitting that the survival of the Hohenzollern dynasty was at stake; and at the reassembling of the Reichstag, near the close of the month, he announced that the government was prepared to carry out its program of reform in good faith, although he added that a far-reaching alteration of the historic structure of Prussia and of the Empire was not a task to be carried through hurriedly. Efforts to force the government's hand led almost immediately to von Hertling's retirement. But his successor was another south German, Prince Maximilian, heir to the grand-ducal throne of Baden, who also entered office with a reputation for liberal views; and the new ministry significantly included three Social Democrats, one of them, Philipp Scheidemann, as a member without portfolio. Already a socialist saddle-maker, Friedrich Ebert, had been elected president of the Main Committee of the Reichstag, which meant that his party had come into practical control of that chamber.

So far as words went, Germany now entered upon a new political era. On September 30 the Emperor issued a proclamation affirming his desire that the German people should "coöperate more effectively than hitherto in deciding the fate of the Fatherland," and declaring his will that "men who are sustained by the people's trust shall to a great extent coöperate in the rights and duties of government." On October 2 the world was informed that the Prussian upper chamber had passed the franchise bill, so amended as to provide for direct and equal suffrage. Three days later the new Chancellor declared in the Reichstag that electoral reform in Prussia must immediately be carried to completion; that "other German states which lag behind in their constitutional conditions" could be expected "resolutely to follow the Prussian example"; and that the Imperial constitution was to be amended so as to

[1] This law, approved by the Bundesrath as early as February 16, 1918, was never in effect.

enable members of the Reichstag who "entered the government" to retain their seats in the popular chamber, after the manner of cabinet officers in Great Britain and France. On October 16 it was announced that the Bundesrath had voted a constitutional amendment depriving the Emperor of the power to declare war without the consent of both Bundesrath and Reichstag, "except in the case where the Imperial territory has already been invaded or its coasts attacked."

Meanwhile President Wilson's direct demand that the German governmental system be popularized as a necessary preliminary to peace negotiations, originally made in the Mount Vernon address of July 4, 1918, was reiterated in a communication to Berlin under date of October 14.[1] To this the new foreign secretary, Dr. Solf, replied, October 21, that the Imperial constitution had already been so modified that in future no government could "enter upon or carry on its work without possessing the confidence of the majority of the Reichstag." The responsibility of the Chancellor, it was asserted, was being "legally extended and safeguarded." Finally, it was reported that the first act of the present government had been to submit a bill to the Reichstag "so amending the constitution as to make the approval of that body requisite for a decision on war and peace." Under date of October 23, President Wilson declared that "significant and important" as these constitutional changes seemed, it did not appear that the principle of responsible government had yet been fully worked out, or that any guarantees existed or were in contemplation that the "alterations of principle and of practice now partially agreed upon will be permanent." Five days later Emperor William instructed the Chancellor to proclaim at once the constitutional amendment purporting to establish ministerial responsibility, and asserted that a new order now came into force which "transfers the fundamental rights of the Kaiser's person to the people."[2]

Meanwhile the German military and diplomatic collapse was

[1] A. B. Hart [ed.], *Selected Addresses and Public Papers of Woodrow Wilson* (New York, 1919), 266–269.

[2] *London Times* (Weekly ed.), Nov. 8, 1918, p. 903. Discussion of political reform in the period under review moved, therefore, toward three main objectives: ministerial responsibility in the Imperial government, popular control over war and foreign relations, and a new electoral system in Prussia. The first was nominally attained. The second was attained to this extent, that the Bundesrath approved an amendment giving the Bundesrath and Reichstag sole power to declare war except in a case where Germany should have been actually invaded or its coasts attacked. The third object was unattained when the collapse came, although a bill of substantially the sort desired had been passed by the Prussian upper house.

imminent. The armies were everywhere being forced back; the invasion of German soil seemed only a question of time; power of resistance was slowly but surely ebbing; schemes to divide and weaken the Allies had failed; Bavaria and other states were threatening to secede; the fall of the Hohenzollern dynasty was widely regarded as not improbable, and in the Reichstag the Socialists were clamoring for a republic. The end came with unexpected swiftness. On November 4 a long-brewing naval mutiny broke out at Kiel; three days later Bavaria was in the grip of an uprising, which spread as fire fanned by a breeze; great popular assemblages in Munich and elsewhere demanded the Kaiser's abdication; on November 9 Berlin itself succumbed to the spirit of insurrection. How far the revolution was the result of concerted planning has not been fully revealed. But the demand of the Socialists for the Kaiser's abdication and for the establishment of a republic had struck a responsive chord throughout the country; organized labor was deeply infected with radical, bolshevist ideas propagated from Russia; the soldiery in the capital and other principal centers stood ready to join the workers. The revolution was actually accomplished through a general strike of factory workers, and, being supported by the troops, was practically bloodless.[1]

On November 9 the Chancellor issued a proclamation announcing the purpose of the Kaiser to abdicate, of the crown prince to renounce the succession, and of the Chancellor himself to retire; and during the next forty-eight hours, while the terms of the armistice laid down by the Allies awaited acceptance, full control of affairs passed into the hands of a provisional government headed by the Socialist leader Ebert, whom Prince Maximilian, in his last official act, designated as his own successor. In its first form, the temporary ministry of Chancellor Ebert was composed in equal numbers (three each) of representatives of the two branches — Social Democrats and Independent Socialists — into which the Socialist party had previously split. "Comrades," ran a decree issued by the new government on the evening of November 9, "this day has completed the freeing of the people. The Emperor has abdicated, his eldest son has renounced the throne. The Social Democratic party has taken over the government, and has offered entry into the government to the Independent Social Democratic party on the basis of complete equality. The new government will arrange for an election of a Constituent National Assembly, in which all citizens

[1] *N. Y. Times Current History*, Dec., 1918, pp. 385–392.

of either sex who are over twenty years of age will take part with absolutely equal rights. After that it will resign its powers into the hands of the new representatives of the people."[1] To conclude an armistice and conduct peace negotiations, to assure the feeding of the population, to "secure for the men in the army the quickest possible orderly return to their families and to wage-earning work" — these were announced as the immediate tasks of the new régime; and the first, the signing of the armistice, was immediately accomplished, November 11. Meanwhile the Kaiser took refuge in Holland, although he delayed nineteen days before signing his formal act of abdication;[2] the crown prince renounced the Prussian and Imperial succession; the hereditary rulers of all of the lesser states gave up the effort to retain power, and new provisional governments assumed control; workers' and soldiers' councils were organized in many cities.

The New Parties and their Programs. — The old régime seemed to have perished. Monarchy was at an end; the Bundesrath and Reichstag broke up and disappeared; Imperial and state constitutions became dead letters. What would the outcome be? What forms and methods of government would finally prevail? There was room for much doubt, not to say apprehension. In the first place, it was by no means certain that the radical forces which, after half a century of waiting, had come into control would be able to preserve their fresh-won dominance. The spirit of revolution had not permeated the people as a whole; indeed, large and powerful classes had not been affected by it at all. It is true that soon after the revolution most of the political parties reorganized themselves and took new names. But they remained largely unchanged in ideas and principles. Thus the old Conservative party and its minor allies came forth as the German National People's party, with Count Westarp and Baron von Gamp as its leaders. But it was frankly Pan-Germanist, militarist, and monarchist in principle; it anxiously awaited a favorable moment for launching the counter-revolution; and meanwhile it directed its efforts toward strengthening the army, combating bolshevism, and preparing the public mind to reject any peace treaty that would deprive the country of its colonies or limit its future as a world power.

The old National Liberal party passed largely into a new German People's party, led by Dr. Stresemann. This new group

[1] "The German Revolution," in *Internat. Conciliation*, Apr., 1919, p. 543.
[2] *Ibid.*, pp. 541–542. See *N. Y. Times Current History*, Jan., 1919, pp. 50–60.

felt that the Hohenzollern dynasty could never be restored and that a counter-revolution would be a failure. Hence it professed to be willing to coöperate with a republican government. But it was monarchist at heart, and many of its prominent members, including its leader, did not hesitate to express their distrust of the republican form. Representing the great industrial and commercial interests, the party hardly differed in its attitude toward the political situation from the German National People's party, representing the landholding interests, save by being less frank and unreserved in its support of militarism, imperialism, and monarchism. The old Catholic *Centrum* was renamed the Christian People's party. Under the leadership of Erzberger and Dr. Spahn, this party openly supported the provisional government; indeed, Erzberger accepted office under that government. Save as the guardian of Catholic interests, the party, however, occupied no very fixed position, and its support of the new régime was not dependable.

An even more important element of uncertainty was the sharp division existing among the radical forces that had now come into power. Four main groups could be distinguished. The most moderate was the German Democratic party, formed from the old Radicals and a section of the National Liberals, under the able leadership of Theodor Wolff, Conrad Haussman, and the eminent jurist Hugo Preuss. This was a middle-class party, but it warmly supported republicanism and favored gradual socialization, at all events of natural monopolies. It was prepared to work whole-heartedly with the Majority Socialists, and soon after the armistice it was admitted to an important share in the government. It, furthermore, advocated free trade, complete separation of church and state, and the establishment of a league of nations. The next two groups in the order of radicalism were the Majority Socialists and the Independent Socialists. It has been pointed out that the Social Democratic party as constituted on the eve of the war contained as many as four or five distinct elements, ranging from the imperialist socialists who differed but little from the bourgeois imperialists to the revolutionary wing which was bent solely upon immediate and thoroughgoing class war.[1] The unanimity with which the party fell into line in support of the government upon the outbreak of the war did not last long, and, at that, was more apparent than real. Before the close of 1914 Liebknecht, Kautsky, Haase, Bernstein, Mehring, and other influential members put them-

[1] See p. 700.

selves on record as opposing the party's support of the war, and early in 1915 the opposition gained the upper hand in the socialist group in the Prussian lower chamber.[1]

Thenceforth the division steadily grew. One small element, headed by Liebknecht and Rosa Luxemburg, consistently and sturdily denounced the government's measures until it was practically silenced by imprisonment. A larger element, including Kautsky, Bernstein, and Haase, criticized the party delegation in the Reichstag for continuing to vote war credits, yet did not deny that the war was a proper one for Germany to wage, until it gradually became convinced that the government's main object was conquest. That conclusion was reached in the spring of 1916, and thereupon the dissentient minority — including about one fifth of the socialist members of the Reichstag — broke with the Social Democratic party and formed a rival organization, known henceforth as the Independent Socialist party.

Led by Ebert and Scheidemann, the Majority Socialists continued to support the war (save during a brief period in the Michaelis régime) until the reverses on the western front in the summer and autumn of 1918 dashed the last hope of a military victory; then they became, in the fashion that has been described, the legatee of the collapsing Imperial régime. They were socialists, but of a moderate, practical stripe. They favored gradual socialization, a rapidly rising income tax, separation of church and state, popular election of judges and other officials, and the entrance of Germany into a league of nations. It was easy for the Democrats to work with them, for the only important difference between the two parties was that one was bourgeois and the other chiefly proletarian. The Independent Socialists, on the other hand, considered themselves the true custodians of Marxist doctrine and stood firmly for the Erfurt Program, with emphasis upon immediate and thoroughgoing nationalization. For two years they openly opposed the war; and although when the end came they were admitted to a share in the provisional government, they again went into opposition as the dominant Majority element swung more and more toward the Right in quest of dependable support.[2]

[1] Bevan, *German Social Democracy during the War*, Chaps. iv–viii.

[2] The Majority Socialists — "Government" Socialists, their rivals scornfully called them — justified their course in two principal ways. Some, especially the revisionists, acknowledged that the attitude of the party before the war was wrong and urged that it was the duty of all socialists to work with the government, with a view to gradually acquiring control thereof. Others said that the party's policy

The fourth and most radical of the groups of the Left in 1918 was the Spartacists [1] or Communists. Under the leadership of Liebknecht and Rosa Luxemburg, this party drew off the extremest elements of both socialist organizations, and its formation and growth were powerfully stimulated by the propaganda of the Russian Bolsheviki. The principles and purposes of the Spartacists were indeed practically identical with those of the bolshevists: ultra-internationalism; abolition of taxes and national debts; substitution of a workmen's militia for the standing army; suppression of capitalism in every form; denial to the capitalist and bourgeois classes of any share whatsoever in the management of public affairs; reorganization of the state on the model of the Russian soviet system. Direct action — not the slow and deliberate method of elections and legislation — was to be the means of bringing about the new order, and the general strike was regarded as the most effective weapon.

As matters stood in November, 1918, there were, therefore, as many as four distinct lines along which political development in the former Empire might run. A slight backward swing would probably mean only a moderate reconstruction of the governmental system, with a revival of monarchy, although hardly of the Hohenzollern dynasty. Continued control by the moderate socialists would mean a republic, fortified with the instrumentalities of advanced democracy, and a gradual and cautious nationalization of the means of production and distribution. Control by the more radical socialists would probably mean an immediate attempt to install the socialistic type of state outright. Finally, Spartacist dominance would lead, like the bolshevist régime in Russia, to the summary annihilation of all existing political forms, the introduction of the soviet, the turning of society upside down by the establishment of the dictatorship of the proletariat.

The probabilities of the situation lay with the second and

before 1914 was the correct one, but that its practice was now justifiably different because it was the duty of all people, socialists included, to support their country in a defensive war. The defense of the Independents, similarly, ran on two lines. One element, maintaining that Germany was waging an aggressive rather than a defensive war, held that on that ground support should be denied. An extremer element argued that all existing governments rested upon capitalism, that war was the natural outcome of the capitalistic system, and that, while the socialist might fight as a common soldier, he ought not to vote money or in any other way share the government's responsibility. For a fuller analysis of these positions see Bevan, *German Social Democracy during the War*, Chap. xxiii. Cf. Walling, *The Socialists and the War*, Chap. xix.

[1] So named for the gladiator Spartacus who led a servile revolt at Rome in 73–71 B.C.

third of these alternatives. The reaction in the direction of modified monarchy and mild parliamentarism might eventually come, but hardly until other plans had been tried and found wanting. On the other hand, the Spartacists, while momentarily in the ascendant in Munich and several other centers, and while able to inspire a vast amount of unrest and disorder, failed to get a grip upon the country as a whole, and they seemed reasonably certain never to be able to [illegible] own the attachment of the average German to the things which bolshevism would destroy. As between the two programs of organized socialism a real choice, however, had to be made. Should the emphasis be placed upon the completion of the political revolution, the making of a new constitution, the reorganization of administration, thereby holding over the social and economic revolution to be taken up gradually at a later time? Or should the social revolution come first? Chancellor Ebert and his Majority supporters favored the first plan; Haase and the more radical elements favored the second; and when it became apparent that the Majority policy was to prevail, Haase and his fellow-partisans withdrew (December 28, 1918) from the provisional government.[1]

[1] No satisfactory history of the revolution of 1918 has as yet been written. English, French, and American periodicals of the period contain many articles and much editorial comment, but as a rule the writers had little exact information. A useful article on the first results of the Imperial collapse is W. J. Shepard, "The New Government in Germany," in *Amer. Polit. Sci. Rev.*, Aug., 1919. G. Young, *The New Germany* (New York, 1920) is a good journalistic account. The new party alignment is described in P. Eltzbacher, *Die neuen Parteien und ihre Programme* (Berlin, 1919). See additional references on p. 720.

CHAPTER XXXIX

THE REPUBLIC AND THE CONSTITUTION

The National Constituent Assembly. — Meanwhile preparations went forward for the election of the constituent assembly which the provisional government had promised at its accession to power. On November 4, amid much criticism, a proclamation was issued announcing that henceforth all elections would be carried out on the basis of equal, secret, direct, and universal suffrage, for both men and women twenty years of age and upwards, on the principle of proportional representation. Other proclamations on the subject followed, and on November 30 the election was set for February 16, 1919. Harassed by Spartacist and other radical outbreaks, and embarrassed by criticism of the conservative elements for its failure to suppress the growing disorders, the government decided, however, to hasten the work of constitution-making; and the elections were actually held on Sunday, January 19. The campaign was spirited, and notwithstanding the efforts of the Spartacists to thwart the entire plan, approximately ninety per cent of the qualified voters went to the polls. The country had been divided for the purpose into thirty-eight districts, returning from six to sixteen members each, on the approximate basis of one delegate for each 150,000 inhabitants; and the total number of delegates had been fixed at 433. It was decided, however, to hold no elections in Alsace-Lorraine, and this brought the number of districts down to thirty-seven and the number of delegates actually chosen to 423. The results, disregarding various minor groups, may be tabulated as follows:[1]

Party	No. of Votes	Per Cent of Total Vote Cast	No. of Seats
Majority Socialists	11,130,452	38.7	165
Christian People's party	5,686,104	19.7	90
Democratic party	5,261,187	18.3	75
National People's party	2,408,387	8.4	42
Independent Socialists	2,187,305	7.6	22
People's party	1,473,975	5.1	22

[1] The Spartacists put no candidates in the field. They either refrained from voting or supported Independent Socialists.

Comparison of these figures with the statistics of the Reichstag elections of 1912 is not especially profitable. But after making due allowance for the differences of the electorate and of the apportionment of seats, it is clear enough that there had been a heavy movement toward the Left, and several of the National People's party formed but 8.4 per cent of the new assembly, whereas its predecessor, the Conservative party, had numbered 17.9 per cent of the old one. On the other hand, the Majority Socialist parties formed 46.3 per cent of the new Reichstag, while the United Social Democratic party held only 30.3 per cent of the organized seats in the Reichstag. It was generally considered that the members of the Assembly were of rather more than average ability. There were many former members of the Reichstag, and numerous other persons of experience in public affairs and in business; trade union officials, journalists, and lawyers predominated. Included in the membership were thirty-seven women, most of them socialists.[1]

The Constitution Framed. — Notwithstanding Independent Socialist opposition and Spartacist turbulence, the Assembly met promptly on the date announced, February 6, at Weimar.[2] There was a good attendance, and the work in hand was entered upon with orderliness and dispatch. The rules of procedure in force in the late Reichstag were adopted; officers were elected, revealing a tendency of the Majority Socialists, the Christian People's party, and the Democrats to work together; and in four days a law was passed regularizing and expanding the provisional government, with a view to tiding over the period until a permanent constitution could be prepared and put into operation. The provisional ministry, presided over by the Chancellor, was to continue as the supreme executive power. But a president of the republic was to be chosen by the convention, and he was to have authority to name the members of the ministry; the ministers were to be responsible to the convention; in initiating legislative measures — which were finally to be acted upon by the convention itself — the provisional government was to have the advice of a "committee of the states," consisting of one or more representatives of all German states having a popular system

[1] W. B. Munro and A. N. Holcombe [trans.], "Constitution of the German Commonwealth," in *League of Nations*, Dec., 1919, p. 346.

[2] This place, the capital of the little grand duchy of Saxe-Weimar-Eisenach, was selected partly because of its association with the best traditions of German liberalism, as represented by Goethe and Schiller, and partly in deference to the desire of the south Germans that the convention should not be held in Prussia. The provisional government, furthermore, wished to shield the gathering from the disorders to which Berlin was constantly exposed.

of government. Ebert was forthwith elected president, and at his request the Majority Socialist Scheidemann formed a cabinet, which proved to be a Majority Socialist, Christian People's party, Democratic *bloc* representing seventy-seven per cent of the convention's membership.

Having converted the purely revolutionary and irresponsible government of Chancellor Ebert into a temporary cabinet government responsible to a popular assembly, the convention proceeded to its larger task of framing a permanent republican constitution. As was to be expected, much criticism fell upon it as its work progressed. It moved too slowly to please some, too rapidly to please others. There was a widespread disposition to expect it to accomplish the impossible. The ultra-radical elements professed to see in it, and in the temporary government which it had set up, the instrumentalities of reaction.[1] At the same time, large sections of the people remained, or became, quite indifferent to it. Disregarding strictures from without, and overcoming its own fatal tendency to prolixity such as had destroyed the usefulness of the Frankfort convention of 1848, it pushed its work of constitution-making to a conclusion about as rapidly as the gravity of the task permitted. The proposed instrument was discussed on first reading in February and early March, in committee from March to June, and on second and third readings during July. On July 31, the permanent constitution was finally adopted, by a vote of 262 to 76, and on August 11 it was put into operation.

The provisional organic law of February 10 provided for no referendum or other act of ratification, so that the decision of the convention was itself definitive; and the promulgation of the permanent instrument entailed no immediate changes in the government. Ebert took the oath of office on the new basis, the Bauer ministry went on unaffected, and the Constituent Assembly assumed the rôle of the national parliament. The task of constitution-making was much lightened by the action of the provisional government in appointing, several weeks in advance of the first meeting, a commission to prepare a draft of a constitution as a basis of discussion. The commission was headed by Professor Hugo Preuss,[2] and the instrument which it submitted for the consideration of the delegates at Weimar, while not

[1] Because of his unwillingness to accept the peace terms offered by the Allies, Scheidemann retired, July 20, and a new coalition ministry was formed by Gustav Bauer, former minister of labor.

[2] Preuss was a Democrat, but not a socialist. He occupied the post of secretary of state for the interior under the revolutionary government.

followed in all of its features, afforded a good starting point for the debates.[1]

The New Constitution. — The republican constitution is a lengthy document, arranged in a preamble and 181 articles.[2] Chapter I, containing 108 articles, deals with the structure and functions of the governmental system. Chapter II, composed of 57 articles, deals with the fundamental rights and duties of German citizens. A third division, containing 16 articles, is made up of "transitional and final" regulations. Not merely in sheer length, but in the amount of detail on matters either unimportant in themselves or of such character as to be commonly left to be regulated by statute, the republican constitution, therefore, resembles its imperial predecessor. Thus, thirteen articles are devoted to railroads and internal waterways, as compared with nine or ten in the imperial constitution. Nevertheless the new constitution leaves many matters to be determined by subsequent organic laws, for whose enactment it provides.

The most striking innovation in the republican constitution, so far as content goes, is the extensive provisions designed to define and protect the rights and liberties of the individual citizen, and also the relationships of citizens in recognized social groups. It will be recalled that, aside from provision for a common German citizenship and for equal protection for all citizens as against foreign powers, the imperial constitution was silent on the subject of the status of the individual; it contained nothing approaching the character of a bill of rights. In marked contrast is the prominence given these matters in the new instrument. The first section of the second chapter makes all Germans equal before the law, recognizes men and women as having fundamentally the same civil rights and duties, abolishes all privileges arising from birth or rank, provides for a uniform national citizenship, recognizes full rights of domicile, travel, and emigration; declares personal liberty inviolable, makes the house of every Ger-

[1] On the framing of the constitution see G. Saunders, "The New German Constitution," in *New Europe*, Feb. 13, 1919; J. Lescure, "Les élections allemandes du 19 janvier à l'assemblée nationale," in *Rev. Polit. et Parl.*, Jan., 1919; I. Rouge, "Une année de république en Allemagne," *ibid.*, Nov. 10, 1919; C. H. Huberich, and R. King, "The New System of German Elections," in *N. Y. Nation*, Feb. 22, 1919; W. H. Dawson, "The Constitution of New Germany," in *Fort. Rev.*, Mar., 1919; F. Meinecke, "Verfassung und Verwaltung der deutschen Republik," in *Deutsche Rundschau*, Jan., 1919; R. Fester, "Die Nationalversammlung und die Zukunft Deutschlands," *ibid.*, Mar., 1919.

[2] The best English version is that prepared by Munro and Holcombe (see p. 718, note 1). Other translations are printed in Young, *The New Germany*, Appendix, and *N. Y. Times Current History*, Oct., 1919.

man his sanctuary, establishes freedom of speech, and guarantees to racial minorities the unrestricted use of their mother tongue in schools, courts, and administration.[1] In some of these matters, it is fair to say, exceptions may be provided for by law.

A section entitled "community life" guarantees the right of peaceable assembly, of organization in associations not contrary to law, and of petition; lays upon all citizens the duty of rendering "personal services to the state and the municipality," of contributing according to their means to the financial support of all public burdens, and, under conditions to be prescribed by law, of rendering military service; and promises legislation for the protection of motherhood, for assistance to families with numerous children, and for preventing the exploitation, and assuring the moral, mental, and physical welfare, of youth.[2] Other extensive sections devoted to religion and education establish complete freedom of belief and worship and of organization for religious purposes, cut off all state contributions to religious societies, provide that there shall be no state church, stipulate that art, science, and teaching shall be free, declare education a function in which nation, state, and community shall coöperate, make school attendance compulsory, require a basic course of instruction covering eight years with supplementary instruction in continuation schools up to the age of eighteen, provide for free instruction and school supplies in both elementary and continuation schools, and prescribe that "all schools shall inculcate moral education, civic sentiment, and personal and vocational efficiency in the spirit of German national culture and international conciliation."[3]

A final section of this portion of the constitution is concerned with economic organization and life. First of all, certain basic principles are laid down: justice as the guiding rule; economic liberty in so far as not inconsistent with the demands of justice; freedom of contract; prohibition of usury; right of private property; expropriation only for the benefit of the community and by due process of law; right of inheritance, qualified by recognition of the title of the state to a share. The distribution and use of land are to be supervised by the state with a view to preventing misuse and "insuring to every German a healthful dwelling." Private property in land remains. But unearned

[1] Arts. 109–118. Munro and Holcombe, *Constitution of the German Commonwealth*, 382–384.
[2] Arts. 119–134. *Ibid.*, 384–387.
[3] Arts. 135–150. *Ibid.*, 387–392.

increment in the value of land inures to the benefit of "the community as a whole;" and there is nothing to prevent socialization in whatever degree the state may care to undertake it. All mineral resources and "economically useful forces of nature," *e.g.*, water-power, are subject to the control of the state; and, by giving due compensation, may be made to transfer to public ownership "private business enterprises adapted for socialization." Finally, labor is placed under the special protection of the state, with full right of organization for the promotion and defense of its interests; and provision is made for a system of workers' councils leading up to a National Economic Council which shall have the right not only to propose social and economic laws to the Reichstag, or National Assembly, but to give preliminary consideration to government bills of this character before such measures are presented to the parliamentary body.[1] This portion of the constitution, therefore, gives the new system the socialistic slant to which its authorship predestined it, and likewise shows the influence of the Russian soviet idea.

The old imperial constitution could be amended in exactly the same manner in which ordinary laws were adopted, *i.e.*, by simple majority vote in the Bundesrath and Reichstag, save for the limitation that any amendment was considered as rejected if as many as fourteen votes were cast against it in the Bundesrath. The new constitution also provides for its amendment by a process similar to that of ordinary legislation. Two thirds of the legal membership of the Reichstag, or National Assembly, must, however, be present when an amendment is voted on, and a two-thirds majority of the votes cast is necessary for adoption; a two-thirds vote in the Reichsrath, or National Council, completes the process, and the president promulgates the measure. In case, however, the National Council rejects an amendment which the Assembly has voted, two weeks are allowed in which the dissenting body can demand a referendum. If no demand is made, the amendment is promulgated at the end of the period; if a demand is made, the measure's fate is determined by the voters. Furthermore, an amendment may be proposed by the people and voted by them, regardless of the will of the representative bodies. Whether the proposal submitted emanates from the National Assembly or from the people themselves, the assent of a majority of the qualified voters is necessary for adoption.[2]

[1] Arts. 151–165. Munro and Holcombe, *Constitution*, 392–396.

[2] Art. 76. *Ibid.*, 372–373. The constitution leaves the details of the referendum and initiative to be regulated by a national law.

Joining as it does the referendum and the initiative with action by the legislative bodies, the amending process bears closer resemblance to that in operation in Switzerland than to any other in western Europe.[1]

The Governmental System: General Aspects. — On turning to the governmental system provided for in the new constitution, one encounters an initial difficulty in the terminology employed. One meets at every turn the old names — "Reichstag," "Reichsrath," "Reichskanzler," "Reichsgericht." The term *Reich* means "empire," or in adjectival use "imperial;" at all events, this was its signification before 1918. Under the new constitution Germany is, however, a republic, and all of its institutions are presumably republican. Hence "Reich" must now be translated by some term consistent with republicanism; and the best that has been found is "commonwealth."

A more serious difficulty arises when one attempts to determine whether the new governmental system is federal or unitary. The plan prepared by the Preuss commission was clearly federal. Prussia was to be split up into seven or eight states, the smaller existing states were to be combined into about the same number, and the new group (fifteen in all) were to be erected into a federal republic, with an elected president and a bicameral parliament. The forces of particularism were, however, too powerful to permit such a scheme to be adopted, and the Constituent Assembly left the old state boundaries intact, except, of course, in so far as alterations of the exterior border lines were provided for in the treaty of peace signed June 28, 1919.[2] The new governmental system not only assumes but requires the existence of states. It is important to note carefully, however, the position which these political divisions are expected to occupy. The outstanding fact is their subordination to the Commonwealth as a whole, especially as compared with the semi-autonomy prevailing under the former Empire. In the first place, every state must have a republican form of government, with representative assemblies (both state and municipal) elected by "the universal, equal, direct, and secret

[1] The salient features of the republican constitution are described in W. J. Shepard, "The New German Constitution," in *Amer. Polit. Sci. Rev.*, Feb., 1920; E. Freund, "The New German Constitution," in *Polit. Sci. Quar.*, June, 1920; and I. Rouge, "La nouvelle constitution allemande," in *Rev. Polit. et Parl.*, Mar. 10, 1920. A brief commentary is F. Stier-Somlo, *Die Verfassungsurkunde der Vereinigten Staaten von Deutschland* (Tübingen, 1919).

[2] These alterations were stipulated in Articles 27–30 of the treaty. Upwards of 30,000 square miles were lost unconditionally, and the status of about 7000 square miles more was made contingent upon the outcome of a number of plebiscites. The total area of Germany before the war was 208,834 square miles.

suffrage of all German citizens, both men and women, according to the principles of proportional representation," and with a responsible cabinet.[1] In the second place, state boundaries may be altered and new states may be created, even against the will of the states affected. If the states directly concerned give their consent, these alterations can be made by ordinary law. An ordinary law suffices also if one of the states affected does not give its consent, provided the action " is desired by the population concerned [to be ascertained by a referendum] and is also required by a preponderant national interest." But in any case the change can be made by a constitutional amendment.[2]

A third limitation upon the freedom of the states arises from the distribution of governmental powers. The principle upon which this distribution is made is the same as that prevailing in the former Empire, in Switzerland, in Australia, and in the United States; that is to say, the powers of the central, national government are enumerated, while those of the divisional governments are residual. But the distribution amply illustrates the well-known centripetal or unitary tendency in contemporary federal systems; for the powers given the Commonwealth government far exceed those belonging to the former Empire. Exclusive jurisdiction is conferred over foreign relations, colonial affairs, citizenship, immigration, naturalization, extradition, national defense, coinage, customs, postal service, telegraphs, and telephones.[3] Full control over taxation and other sources of income is granted also, subject only to the stipulation that if the Commonwealth claims any source of revenue which formerly belonged to the states, it must " have consideration for the financial requirements of the states." The Commonwealth may prescribe by law fundamental principles concerning " the validity and mode of collection of state taxes," in order to prevent injury to its own revenues, double taxation, the imposition of excessive burdens, export bounties, and tax discriminations by one state against the products of other states.[4] Then there is a long list of matters over which the Commonwealth has any amount of jurisdiction that it may see fit to exercise, subject only to the general condition that so long and in so far as it does not exercise such jurisdiction, control remains in the states. Prominent in this list are: civil law, criminal law, judicial procedure, the press, poor relief, public health, all forms of insurance, labor legislation, pensions, weights and measures, paper currency, banking,

[1] Art. 17. Munro and Holcombe, *Constitution*, 358.
[2] Art. 18. *Ibid.*, 358. [3] Art 6. *Ibid.*, 354. [4] Arts. 8, 11. *Ibid.*, 355–356.

industry, mining, railroads and internal communications of all kinds, navigation, fisheries, and the socialization of natural resources and business enterprises.[1]

In the next place, the constitution expressly establishes the supremacy of the laws of the Commonwealth over the laws of the states which are in conflict with them and provides that in case of difference of opinion recourse shall be had to the decision of a supreme judicial court of the Commonwealth.[2] Finally, the president is authorized to compel a state, by force of arms if necessary, to perform the duties imposed upon it by the constitution and by national law.[3] Under the imperial constitution there was a similar power of "execution," which was exercised by the Emperor on decision of the Bundesrath.

These are some of the evidences of the subordination of the states in the new republican system. On the other hand, the Commonwealth constitution clearly recognizes the states as having a field or sphere of their own. "Political authority," it says, "is exercised in national affairs by the national government in accordance with the constitution of the Commonwealth, and in state affairs by the state governments in accordance with the state constitutions."[4] Large concurrent and residual powers are left to the states. The states have the unusual right to send plenipotentiaries to sittings of the National Assembly and of its committees, as a means of submitting the views of their cabinets on the matters under consideration. Furthermore, the states as such are represented in the National Council, as they formerly were in the Bundesrath.

Applying the true test of federal government, *i.e.*, a distribution of powers on a territorial basis by a sovereign authority through the medium of a constitution which is subject to alteration by the unilateral action of neither the central government nor the divisional governments, the new German system fails to qualify, for the reason that the constitution, and therefore the distribution of powers effected by it, can be changed to any extent by the government of the Commonwealth; the states have no guarantee of their powers — nor, indeed, of their very existence — as against that government. Fundamentally, the system is, therefore, unitary; although the historic federal stamp is far from having been completely erased.

[1] Arts. 7, 12. Munro and Holcombe, *Constitution*, 354–356.

[2] Art. 13. *Ibid.*, 357. Compare Art. 6, Sect. 2, of the constitution of the United States, and likewise the power of the federal Supreme Court to pronounce final judgment on the constitutionality of state laws.

[3] Art. 48. *Ibid.*, 365. [4] Art. 5. *Ibid.*, 354.

The Reichstag, or National Assembly. — The Reichstag was the only popular element in the imperial governmental system, and it was natural that this institution should be carried over into the new régime with comparatively few changes of form. Not even the name was discarded, although, taken literally, it is incongruous with republicanism. For the sake of clearness, it is wise to employ, rather, the term National Assembly. The changes which were made in the body (and they are supremely important) relate to two matters principally — manner of election and powers. Details of the new electoral system were left to be regulated by a later law. But, in harmony with the provisional government's pronouncement of November 12, 1918,[1] the constitution requires all delegates to be chosen by "universal, equal, direct, and secret suffrage by all men and women over twenty years of age, in accordance with the principles of proportional representation."[2] The term is four years, although the body may be dissolved — not exceeding once for the same cause — by presidential decree. Disputed elections are decided, not by the Assembly itself, but by an electoral commission consisting partly of delegates selected by the Assembly from its own membership and partly of members of the National Administrative Court, to be appointed by the president of the Commonwealth on nomination of the president of the court.[3] The Assembly elects its own officers and regulates its own procedure, and the members are protected by the customary legislative immunities. Aside from control over the executive authorities (which will be explained below), the Assembly has two principal powers, constituent and legislative. It adopts constitutional amendments; although, as has been pointed out, its acts of this character may be overruled by a popular vote, and amendments can be popularly initiated and adopted without its assent. Its control over legislation is similarly limited by the operation of the popular initiative and referendum.

Bills are introduced either by the *Reichsregierung*, or Cabinet, or by members of the Assembly; and after passage in the Assembly they take effect at the expiration of fourteen days, providing the National Council concurs, or providing the Assembly, on reconsideration, disapproves by a two-thirds majority the objection of the National Council, and the president of the republic chooses not to avail himself of his right in this case to

[1] See p. 717.
[2] Art. 22. Munro and Holcombe, *Constitution*, 359.
[3] Art. 31. *Ibid.*, 361.

submit the measure in hand to a popular referendum. All measures upon which the two bodies cannot agree may be submitted by the president to a referendum. Furthermore, a measure whose promulgation is deferred at the demand of at least one third of the National Assembly must be submitted if one twentieth of the qualified voters so petition. An act of the Assembly may, however, be annulled by a popular vote only if there is a majority against it and if a majority of those qualified take part in the vote. Finally, bills may be both popularly initiated and popularly adopted. A legislative proposal, which must take the form of a draft bill, may be initiated by one tenth of the qualified voters, and the cabinet is required to submit all such proposals to the Assembly, with a statement of its views thereon. If the Assembly approves, the proposal forthwith becomes law; if it does not approve, the measure is submitted to a popular vote.[1]

The Reichsrath, or National Council. — The framers of the constitution inevitably encountered the eternal problem of a second chamber. Three obvious solutions suggested themselves: to create a senate, coördinate in function and power with the National Assembly; to adopt the unicameral principle and establish no second body at all; and to carry over the old Bundesrath, adapting it to the spirit and purposes of the new order. The Preuss commission recommended the first course, but the Assembly decided in favor of the third; and provision was made for a Reichsrath, or National Council, which, like the old Bundesrath, should represent the states as such, rather than the people directly. As in the Bundesrath, representation in the National Council is conferred in terms of votes rather than members; although the states are expressly given the right to send as many representatives as they have votes. Each state having a population under one million is entitled to one vote; each having a population of more than that number is entitled to a vote for each million people, and to an additional vote for any fraction thereof which equals the number of inhabitants of the least populous state.[2] But no state may have more than two fifths of all votes. The last-mentioned provision has bearing, of course, only in connection with Prussia, and is designed to keep within bounds the predominance of that member of the union. It is to be observed,

[1] Arts. 73–75. Munro and Holcombe, *Constitution*, 371–372.

[2] A clause of Art. 61 providing for the representation of German Austria in the National Council was stricken out at the demand of the Supreme Council of the Allied and Associated Powers, on the ground that it contemplated an arrangement incompatible with Austrian independence.

however, that whereas Prussia's seventeen votes in the old Bundesrath formed but slightly more than twenty-nine per cent of the total,[1] the present rule permits a maximum of forty per cent. Votes are distributed afresh by the National Council after each general census. The states are required to be represented in the Council by members of their cabinets. Here again there is no important change, because by custom the states were as a rule represented in the former Bundesrath by members of their governments. With a view to a certain disintegration of the Prussian quota, it is stipulated that half of the Prussian votes shall be at the disposal of the provincial administrations of that state.[2]

So far as the formal provisions of the constitution define them, the powers of the National Council can be stated briefly; only some years of experience can show what they will amount to in practice. They relate to two chief matters — constitutional amendments and legislation. The rôle of the Council in amending the constitution has been explained elsewhere.[3] The body has no absolute veto on amendments as passed by the National Assembly, but it can require them to be submitted to a popular referendum. The legislative function is more extensive, although, speaking broadly, it comes to substantially the same thing. In the first place, the Council coöperates with the cabinet in initiating and giving preliminary consideration to legislative measures. It has a right to be consulted on every bill which the ministers propose to present to the National Assembly, although its dissent need not restrain the ministers from their purpose. Furthermore, it may submit to the cabinet legislative proposals of its own, and the cabinet must pass them on to the Assembly, with or without its approval.

The second main legislative function comes into play after the Assembly has passed a bill. The Council then has a right to interpose objection and to cause the measure to be remanded to the Assembly for reconsideration. If an agreement is reached between the two bodies, the bill becomes law. If the Assembly disagrees with the Council by a two-thirds majority, the measure likewise becomes law, unless the president of the Commonwealth chooses to submit it to a popular referendum and the people reject it. On the other hand, if the Assembly disagrees with the

[1] Disregarding the three non-Prussian votes which were controlled by the Prussian government, and also the three restricted votes of Alsace-Lorraine.

[2] Art. 63. Munro and Holcombe, *Constitution*, 369.

[3] See p. 722.

Council, but not by a two-thirds majority, the measure does not become law unless the president submits it to a referendum and the people approve it.[1] The Council, therefore, has, in addition to the right to initiate bills, a suspensive veto; but it has no veto which cannot be overcome, either by the Assembly itself or by the people through the medium of the referendum. In short, the Council is a checking and revising authority, which is designed to serve most of the purposes of a second chamber elsewhere, but it is not a coördinate branch of the legislature; the National Assembly is, to all intents and purposes, a unicameral parliament. The reversal of the old relation between Reichstag and Bundesrath is so obvious as to require no comment.

The Executive: President and Cabinet. — The ideal of the liberal forces had long been a system of government based upon cabinet responsibility, and in the new constitution this ideal found full expression. The titulary executive became a national president; the working executive, a group of ministers appointed by the titulary head and responsible to the National Assembly for all of the acts of the government. The president is chosen by direct vote of the people for a term of seven years, and is indefinitely re-eligible. His tenure is, therefore, like that of the president of France; furthermore, as in that country, there is no vice-president, so that if the office falls vacant prematurely, a new president is forthwith elected, and for a seven-year term. The most novel aspect of the presidential tenure is the power of the National Assembly to suspend the chief executive by a two-thirds vote, and of the people, in pursuance of the Assembly's action, to remove him by simple majority. Like the chancellor and ministers, the president can be impeached by the National Assembly before the Supreme Judicial Court of the Commonwealth; but, in addition, he is subject to the popular "recall." The powers assigned the president make up an imposing list — to appoint and remove all civil and military officers of the Commonwealth, to execute the laws and maintain public order, to send and receive ambassadors, to make treaties (subject to the approval of the National Assembly), to command the armed forces, to exercise the power of pardon, to decide under given circumstances whether to submit acts of the National Assembly to a popular vote. But this enumeration of functions is followed immediately in the constitution by a stipulation that "all orders and directions of the national president, including those concerning the armed forces, require for their validity the countersig-

[1] Arts. 69, 74. Munro and Holcombe, *Constitution*, 371–372.

nature of the national chancellor or of the appropriate national minister. By the countersignature responsibility is assumed."[1] This provision, of course, takes from the president the exercise of the several powers in person, relieves him of responsibility for what is done under them, and in short, institutes a cabinet system.

The head of the ministry, or cabinet, is the chancellor; the name, antedating as it does the fallen Empire, has apparently established itself permanently in German political terminology. The new chancellorship is, however, entirely unlike the old. The chancellor is now only *primus inter pares* as regards his colleagues; in other words, his status is not different in any important respect from that of the premier in cabinet systems of government elsewhere. The chancellor is named by the president; he selects the remaining ministers, who, however, are legally appointed by the president; and a familiar and essential feature of the cabinet system is brought to view in the provision that "the national chancellor and the national ministers require for the administration of their offices the confidence of the National Assembly; each of them must resign if the National Assembly by formal resolution withdraws its confidence."[2] In Great Britain, France, and Italy the maintenance of harmonious relations between the ministry and the parliamentary majority is entirely a matter of custom and convenience; in Germany alone, among European states, is it expressly enjoined by the written constitution. On the question whether the chancellor and ministers are to be appointed from the membership of the Assembly or from outside, and whether, in the former case, they shall remain members of the body after appointment, the constitution is silent.[3] However, the written constitutions of other cabinet-governed European states also contain nothing on the subject, and it is reasonable to expect that in Germany as elsewhere the rule will gradually establish itself that, with rare exceptions, the ministers shall be at the time of their appointment, or shall promptly become, members of the legislative body. Meanwhile the constitution gives the chancellor and all ministers a right to be present at sittings of the National Assembly and of its committees, to take part in the proceedings of the National Council and of its committees,[4]

[1] Art. 50. Munro and Holcombe, *Constitution*, 366.

[2] Art. 54. *Ibid.*, 367.

[3] The president, however, is forbidden (Art. 44) to be "at the same time a member of the National Assembly."

[4] All chairmanships of the Council and its committees are held by cabinet members.

and to introduce bills in the one body and to make proposals in the other.

With a view to ensuring the ultimate supremacy of the National Assembly over the executive authorities, the constitution provides not only for ministerial responsibility and for the retirement of ministries whenever they lose the Assembly's confidence, but also for investigations and impeachments on the Assembly's initiative. One fifth of the members can cause to be created a committee of investigation, with full power to require the administrative and judicial authorities to give testimony and submit documentary evidence.[1] One hundred members can require the Assembly to take up the question of impeaching the national president, the chancellor, or any minister, and in the event of a two-thirds majority in favor of the proposal, the proceedings are to be formally instituted before the Supreme Judicial Court. The constitution leaves the details of impeachment procedure to be regulated by a national law. But it prescribes as ground for impeachment "any wrongful violation of the constitution or laws of the Commonwealth."[2]

The Judiciary. — The imperial constitution, as amended in 1873, vested in the Empire power of general legislation concerning the entire domain of civil and criminal law, and of judicial procedure, but made no provision for a system of courts; and until 1919 such imperial courts as existed — chiefly the *Reichsgericht*, created in 1879 — rested solely upon statute. Each state had its own judicial system, and justice was administered almost entirely in state courts. The republican constitution devotes an entire section[3] to the subject. It assumes the perpetuation of the state judicial systems, but it contemplates a parallel hierarchy of national courts, both judicial and administrative, which might conceivably come to resemble (save for the presence of administrative tribunals) the judicial machinery of the United States. Only two specific national tribunals are mentioned — a *Reichsgericht*, or National Judicial Court, and a *Staatsgerichtshof*, or Supreme Judicial Court. But others might be added, by constitutional amendment, or even by statute. Of equal importance are certain provisions designed to secure both the independence of the judiciary and the protection of the individual citizen. Judges are declared free and subject only to law; those attached to the ordinary courts are appointed for life and may not be removed from office or transferred or retired against their will,

[1] Art. 34. Munro and Holcombe, *Constitution*, 362.
[2] Art. 59. *Ibid.*, 367–368.
[3] Arts. 102–108. *Ibid.*, 380–381.

except by virtue of a judicial decision and for the reason and in the manner prescribed by law. Finally, extraordinary courts are pronounced illegal; litigants are guaranteed against removal from the jurisdiction of their lawful judges; military jurisdiction is abolished except in time of war and on board war-vessels; and the citizen is to be protected against orders and decrees of the administrative authorities by administrative courts, both national and state.

The Constitution on Trial: Elections of 1920. — These pages were written less than a year after the constitution herein outlined was put into operation. Hence there was no sufficient basis of experience for an evaluation of the new system as a working plan of government, or for a forecast of its durability and growth. The first impression that one receives from a survey of the republic's political history in the period is that of remarkable confusion; and this effect is heightened, rather than otherwise, by closer scrutiny. Party lines constantly shift; unknown figures rise to sudden prominence; old leaders crop up in unexpected places; the forces of radicalism, moderate liberalism, and reaction interplay in startling, and sometimes inexplicable, manner; prone to theoretic discussion and untrained in the art of government, the great body of the people finds it hard to come together in dependable support of a plan of action.

Partly as a result of these conditions, the Ebert government was, by general admission, weak and unstable. But there were other causes. One was the mediocrity of leadership in government circles. With a few conspicuous exceptions, the men in the higher offices were not only inexperienced but of very limited ability.[1] Another cause was the retention in the various administrative services of great numbers of functionaries who were monarchistically inclined and entirely out of sympathy with the new order. The bureaucracy lived on practically as before, and was a source of continual embarrassment for the government; although it is not clear that the ministers could have cleaned house in the departments without stirring up equally serious troubles of a different sort. Reaction repeatedly lifted its head, and in March, 1920, the government was temporarily driven from Berlin by a *coup* which brought the militarist von Kapp into the chancellorship and his coadjutor Baron von Lüttwitz into the post of minister of defense formerly occupied by General Noske. The

[1] A somewhat satirical estimate, by a Berlin journalist, of the chief figures in German public life in 1918–20 will be found in E. Dombrowski, *German Leaders of Yesterday and To-day* (New York, 1920).

country, however, was not in the mood for a civil war, and by calling a general strike the legitimate government quickly roused the working classes to its defense and regained control.[1] The counter-revolution failed; but the monarchist, militarist elements, far from accepting their defeat as final, merely concluded that the time for the restoration was not yet ripe.

As an aid to regaining control, the Ebert government promised that the existing Assembly, originally chosen in January, 1919, to frame the constitution, should be promptly supplanted by an Assembly elected under the constitution for the regular four-year period; and the new body was duly chosen on June 6. The contest brought out a number of interesting facts about the party situation. The first was that the two parties of the Right — the National People's party (old Conservatives) and the People's party (former National Liberals) were not only intensely nationalist, strongly anti-socialist, and bitterly antisemitic, but decidedly monarchist. The former frankly avowed its monarchism by demanding "the restoration of the German Imperial monarchy (*Kaisertum*) established by the Hohenzollerns," although it shrewdly refrained from calling for the restoration of the ex-Kaiser himself, or even of a Hohenzollern. The latter still professed to be republican, but in phrases that were discounted both by opponents and by unbiased observers. The Nationalists pronounced the Ebert régime a failure, declared democracy bankrupt, urged a government of experts rather than of politicians, and advocated a close alliance of church and state. The People's group held practically the same opinions, but talked less freely about them. Both parties were very strong in the army; both were compromised by the von Kapp *coup;* both were suspected of favoring a military dictatorship.

The Christian People's party (the old Center) occupied an intermediate position, but not without difficulty. Its left wing, led by Erzberger, and its conservative element, led by Trimborn, were in serious disagreement; besides, its unity was menaced by the opposition of the federalists to the growing centralization of the government — a feeling which, indeed, led the Bavarian *Centrum* to secede and to form a separate Bavarian Christian People's party. The second member of the government *bloc*, the Democrats, stood firm in support of the new constitution as "the noblest and freest in the world," although its

[1] H. N. Brailsford, "A White Guard in Germany," in *New Repub.*, Apr. 21, 1920; T. Wolff, "The Victory of German Democracy," in *N. Y. Nation*, May 1, 1920.

ranks were depleted by the secession of a portion of its Berlin contingent to the more conservative People's party.

The Social Democrats went into the contest as the dominant party both in the government coalition and in the Assembly. Yet they, too, suffered heavy secessions. When the former trade-union officials and labor leaders of the Ebert-Bauer type found themselves in power they drew back from translating their long heralded doctrines and policies freely into action. They had stood steadily with the Junkers and militarists during the war; they continued to use the old army to back up their authority; they did not replace the officials of the old régime generally with new ones of their own way of thinking; they kept up the old methods of martial law and force; fearing revolution, they steadily played into the hands of the reactionaries. Possibly they moved as rapidly as was practicable or wise. But as a socialist régime, their government was more or less of a sham. The more radical-minded of their followers naturally grew dissatisfied, and the result was a steady migration from the Majority ranks into the ranks of the two radical parties, the Independent Socialists and the Spartacists or Communists. This movement was powerfully accelerated by the unpopularity of Noske, a Majority Socialist, as minister of defense, and after the von Kapp episode, which led to Noske's retirement, the policies of the government showed a certain leftward swing. There was no assurance, however, that the Majority party would regain its lost adherents, for both the Independents and the Communists went into the electoral campaign with programs that could be expected to draw the support of all elements that were clearly dissatisfied with the pace at which social and economic change was proceeding. The Independent electoral manifesto was deliberately given a certain tone of moderation, indeed, with a view to drawing off adherents of the Socialist Right. The Communists, it will be remembered, took no part in the elections of January, 1919; and a neo-syndicalist, anti-parliamentary element seceded under the name of the Communist Labor party in 1920 and refused to have anything to do with political methods of action. The majority element, however, went before the people with a program whose central feature was the immediate institution of the soviet system on the Russian model.[1]

The results of the election only added to the confusion and uncertainty which already characterized the political situation.

[1] M. Hirschberg, "German Political Tendencies before the *Coup*," in *N. Y. Nation*, Apr. 3, 1920; Anon., "The German Elections," *ibid.*, June 12, 1920.

As was anticipated, the coalition groups — Majority Socialists, Christian People's party, and Democrats — lost heavily, and the extremist parties, revolutionary on one side and reactionary on the other, made decided gains. The popular vote for Majority Socialist candidates was cut almost in half, and the quota of seats fell from 165 at the elections of 1919 to 112. On the other hand, the Independent Socialists more than doubled their popular vote and raised their quota of seats from 22 to 81. The Christian People's party fell from 90 seats to 68, and the Democrats from 75 to 45. Both parties obviously suffered heavy defections to the more conservative and reactionary groups, which were thus enabled to realize large gains. The National People's (former Conservative) party increased its popular vote by almost one million, and obtained 66 seats as compared with 42 in 1919. The success of the German People's party (the old National Liberals) was even more notable — a tripling of the popular vote and an increase of seats from 23 to 62. Ten parties, in all, elected candidates; in addition, some votes were cast for candidates offered by ten minor groups and so-called parties. Thirty women were elected, as against thirty-eight in 1919.[1]

Legislative elections held in Bavaria, Württemberg and other German states at about the same time showed similar tendencies toward political extremes.

Following the elections, the veteran Centrist president of the National Assembly, Konstantin Fehrenbach, assumed the chancellorship, and a ministry was made up consisting exclusively

[1] The official figures are as follows (though it must be observed that they include 40 members carried over from the plebiscite districts where there was no election):

Party	Popular Vote	No. of Deputies
Majority Socialists	5,614,456	112
Independent Socialists	4,895,317	81
Christian People's party (Centrists)	3,540,830	68
National People's party	3,736,778	66
German People's party	3,606,316	62
Democrats	2,202,334	45
Bavarian People's party*	1,171,722	21
Christian People's party*	65,219	
Communists	441,995	2
Bavarian Peasant's party	218,884	4
German-Hanoverians	319,100	5

* These two groups were local off-shoots of the Centrist, Christian People's, party.

of Centrists, adherents of the German People's party, and Democrats. The Majority Socialists had a plurality in the Assembly, and they still held the presidency of the republic. But power had passed from their hands; the government was once more essentially non-socialist. The Fehrenbach cabinet, curiously, had the support, on party lines, of only 175 of the 420 members of the Assembly. But at the Chancellor's solicitation the Majority Socialists and the National People's party agreed to refrain from acts that would embarrass the new government at the start; and when, shortly after the new Assembly convened (June 24), the Independent Socialists presented a resolution expressing lack of confidence, the ministry was decisively sustained. Only the divisions among the non-coalition parties, however, could be expected to enable a government so precariously situated to retain power for any considerable period. The ultimate equilibrium of political elements and forces remained to be disclosed.

5. Russia

CHAPTER XL

THE SOVIET REPUBLIC AND ITS GOVERNMENT

The four or five years covered by the Great War saw a political transformation in central and eastern Europe which outdistanced anything of the kind experienced in western countries since the French Revolution. Under circumstances that have been described, Germany cast out the Hohenzollern dynasty, besides a group of lesser ruling families, and set up a semi-socialist republic. Overwhelmed in defeat, the Habsburgs lost their hold in Austria-Hungary, and the ramshackle Dual Monarchy fell apart into a republic of German Austria, a republic of Hungary, a republic of Czechoslovakia, besides important southern lands that passed in part to Italy and in part to the new kingdom of Jugoslavia. The disintegration of Russia in 1917–18 gave rise to a chain of new states stretching from the Arctic Ocean to the Black Sea — Finland, Esthonia, Latvia, Lithuania, Poland, and Ukrainia — all republics, and all equipped with, or bent upon attaining, written constitutions. The South Slav monarchies were merged in the Jugoslav kingdom, which is practically a greater and democratized Serbia. Rumania, although clinging to monarchy, substituted universal suffrage for the three-class electoral system borrowed at an earlier time from Prussia. Finally, Russia, driven by desperation born of defeat, misrule, and starvation, turned against tsarism, unseated the Romanovs, embraced republicanism, surrendered to a Bolshevist faction, and ended by setting up a political and social order which was without precedent or parallel in the history of that country or of the world.

Governmental systems are still inchoate and political conditions extremely unsettled in all of these states when the present pages are written (1920). It would, therefore, be useless to attempt a description of the various governments which would be true to fact for any length of time, even if space permitted. One

effort only will therefore be made in this direction, namely, a brief account of the political transformation in Russia and of the soviet system of government instituted in that country in 1917 — a scheme of public organization and control which will probably break down or pass gradually into something more in accord with old and familiar systems, but which in any event will have added a remarkable chapter to the history of man's political thought and endeavor.

Russian Political Conditions before the Great War. — A country of continental proportions, stretching ever monotonously before the eye, with the widest contrasts of heat and cold, flood and drought, opulence and misery; a chaos of races and creeds and a babel of tongues; historically in the main, but not wholly, European; geographically largely, but not entirely, Asiatic; a world within itself and a world between worlds — such is the land which we have heretofore known as Russia. The political power which brought this congeries of territories and peoples together had a continuous history from the opening of the fourteenth century, when the newly established principality of Moscow began to extend control over the political divisions around its borders, and likewise to push back beyond the Urals the rule of the Mongols which had lain heavy upon easternmost Europe for more than a century.[1] The circumstances of the foundation of the Muscovite state and the general conditions prevailing in the Muscovite dominions throughout these six hundred years were altogether favorable for strong monarchy, indeed for absolutism. The state was originally built up by the subjugation of rival principalities. Every step in the later expansion of dominion — an expansion which eventually brought under the Russian flag one sixth of the land surface of the globe — was accomplished by conquest or aggressive diplomacy. The Greek Church habitually looked to the tsar[2] for protection and in return upheld his claims to power. The Byzantine ideal led him to adopt the pomp and exclusiveness of an Oriental potentate. The country was remote, and, until late, the people were not touched by western influences.

There were from time to time, it is true, some developments in the direction of representative and liberal government. The

[1] The ascendency of Moscow dates, more precisely, from the reign of the grand duke Ivan I (1330–39). The Russian metropolitan transferred his seat at this time from Vladimir (whither he had moved from Kiev in 1229) to Moscow.

[2] This term was first used as a coronation title in 1547, but it appeared in the Byzantine correspondence of the prince of Moscow somewhat earlier.

same tsar, Ivan IV (1533–84), who became the greatest of Russian autocrats up to his time was the first to convoke a *Zemski Sobor*, or national assembly. This crude, tumultuous counterpart of the English Parliament and of the French Estates General never, however, gained the right to be regularly or frequently convened, and at best it was the organ of the *boiars*, or nobles, rather than of the nation at large. Furthermore, Peter the Great (1689–1725) brushed it aside; and, although not formally abolished, it was never thereafter called together. Catherine II (1762–96) set up a Grand Commission, composed of 564 persons chosen throughout the Empire, to assist in a recodification of the national laws. But the body was not intended to be a parliament, and its deliberations proved so profitless that it was disbanded with its main task still unperformed. Alexander I came to the throne in 1801 with liberal ideas. He had seriously considered giving the country a written constitution, to be prepared by an elected representative assembly. As tsar, he, however, drew back from the plan. Finally, Alexander II (1855–81) came to a decision to establish a partially elective national assembly with power to give preliminary consideration to legislative proposals; but he was assassinated twenty-four hours before the decree was to be promulgated. Only in the domain of local government was any real and lasting advance made toward popular control of affairs up to the close of the nineteenth century. Catherine II introduced elective municipal *dumas*, or councils, which represented all classes of the population. Alexander II, in addition to reconstructing the judicial system and further reorganizing municipal government,[1] instituted two sets of elective *zemstvos*, or assemblies — district zemstvos, chosen by the landholders (including the newly emancipated serfs), and provincial zemstvos, composed of representatives of the several district assemblies within the province, and endowed with substantial legislative and fiscal powers.[2]

The twentieth century found autocracy still in the saddle. In a greater degree than ever before, however, it was on the defensive. The landholding classes — both large owners and peasants — were alienated by the favors shown by the government to the newer industrial interests, and in a series of reports in 1902–03 the zemstvos called loudly for a national parliament and for

[1] On the system established see M. Kovalevsky, *Russian Political Institutions* (Chicago, 1902), 222–231.

[2] It should be added that the peasant communes (*mirs*) were practically autonomous until Alexander III (1881–94) placed them under the supervision of wealthy landed proprietors.

many other innovations and reforms. On the other hand, the factory workers of the towns and cities were fast going over to socialism, and in 1898 a Workmen's Social Democratic party began to emulate the socialist parties of western countries. Important middle-class professional and industrial elements urged political reorganization on western lines, and in 1904 a small but active group of intellectual liberals organized a Union of Liberators as a political party. Added to these forces of opposition were the Poles, Finns, and other subject nationalities, whose first interest was to resist "Russification," but who saw in the political liberalization of the Empire the surest means of accomplishing their emancipation.

The Russian defeats in the Far East in 1904–05 roused strong public feeling and gave the discontented elements an unexpected opportunity. An informal gathering of representatives of the zemstvos and dumas petitioned the tsar in November, 1904, to convoke a constituent assembly and demanded a national parliament: and after a period of evasion public disorders became such that the government was compelled, in self-defense, to take the desired action. In August, 1905, a constitutional decree called into existence a representative body known as the Imperial Duma: a manifesto of October stipulated that no law should become effective without this body's consent: a rescript of December practically conceded manhood suffrage.

The political transformation thus auspiciously begun did not, however, work out satisfactorily. The restoration of peace in 1905 largely freed the government from the embarrassments which had compelled it to make concessions. The reform elements fell apart into parties — Liberals, Constitutional Democrats, "Octobrists," Social Democrats, Socialist Revolutionaries — which squandered their strength in conflicts among themselves. The great landlords and other reactionaries set on foot a vigorous campaign for a restoration of the old régime. The upshot was that constitutional, parliamentary government was practically strangled at its birth. First, a decree of March, 1906, associated with the Duma, which now became merely the lower house of a bicameral legislature, an upper chamber in the form of the old Council of State, renamed the Council of the Empire, and composed of equal numbers of members appointed by the tsar and elected indirectly by certain privileged classes. The same decree excluded from parliamentary discussion the fundamental laws of the Empire, the composition of the legislative bodies, the army and navy, and foreign relations. When the

first Duma, convoked in May, 1906, took up the preparation of measures looking to the establishment of pure parliamentary government, the body was dissolved and new elections were ordered; and a year later the second Duma met the same fate, under similar circumstances. Before further elections were held, the government arbitrarily reconstructed the electoral system, withdrawing representation from some parts of the Empire, shamelessly "gerrymandering" the remaining parts, and introducing complicated machinery to insure the return of majorities favorable to the government.[1] The third Duma, chosen in 1907, was duly deferential and lasted until 1912. The fourth was in existence when the Great War began.

The revolution of 1905 yielded some lasting political gains. Although far from being the independent parliament that many of the reformers had desired, the Duma reflected public feeling to some extent and frequently exerted some influence on the government's policies. It familiarized the people with representative institutions on a national scale, and it furnished a possible basis for the development of a true parliamentary system. In the final analysis, the Empire's government was still in 1914, however, a thinly veiled bureaucratic autocracy.[2]

The Bourgeois Revolution of March, 1917. — Nothing less, perhaps, than superhuman wisdom on the part of the ruler and his ministers could have carried the Russian system of government through the Great War intact. But Nicholas II was far

[1] S. N. Harper, *The New Electoral Law for the Russian Duma* (Chicago, 1908). The electoral system is fully described in Seymour and Frary, *How the World Votes*, II, Chaps. xxvi–xxvii.

[2] The political history of Russia since the opening of the nineteenth century is briefly narrated in C. J. H. Hayes, *Political and Social History of Modern Europe*, I, Chap. xii, II, Chap. xxv; *Cambridge Modern History*, X, Chap. xiii, XI, Chaps. ix and xxii, XII, Chaps. xii–xiii; Hazen, *Europe Since 1815*, Chaps. xxix, xxxi; and Schapiro, *Modern and Contemporary European History*, Chaps. xxi–xxiii. A standard history is A. Rambaud, *Histoire de la Russie depuis les origines jusqu'à nos jours*, 6th ed. rev. to 1913 by É. Haumant (Paris, 1914), trans. by L. B. Lang and with chapters covering the period 1877–1904 by G. M. Adam, under the title *History of Russia* (London, 1904). Excellent general descriptions are D. M. Wallace, *Russia* (new ed., New York, 1908); M. Baring, *The Russian People* (2d ed., New York, 1911); and L. Wiener, *An Interpretation of the Russian People* (New York, 1915). Institutional history is covered in a scholarly manner in M. Kovalevsky, *Russian Political Institutions* (Chicago, 1902), and the revolutionary movement is treated, from various points of view, in J. Mavor, *Economic History of Russia* (New York, 1914), II, Bks. iv–vii; P. Milyoukov, *Russia and its Crisis* (Chicago, 1905); B. Pares, *Russia and Reform* (London, 1907); W. E. Walling, *Russia's Message* (New York, 1908); M. Kovalevsky, *La crise russe: notes et impressions d'un témoin* (Paris, 1906); M. J. Olgin, *The Soul of the Russian Revolution* (New York, 1917); P. Vinogradoff, *The Russian Problem* (London, 1914). E. A. Goldenweiser, "The Russian Duma," in *Polit. Sci. Quar.*, Sept., 1914, is a useful article.

from being superhumanly wise, and, with few exceptions, the people who surrounded and influenced him — whether the ministers who passed in dreary succession across the political stage, the members of his immediate household, or the hangers-on at the court — were stupid, reactionary, and corrupt. The result was that under the impact of the war the government tottered and collapsed, forces of revolution burst all restraints, the tsar and his family were brutally murdered, the Red Terror swept the land as fire driven by the wind, society was turned upside down, and the once mighty Empire became only a name. The outbreak of the war was the signal for a demonstration of patriotic feeling almost as unanimous and impressive as the show of public sentiment in France and other belligerent countries. All parties except an extreme group of Social Democrats pledged the government unreserved support.[1] However, the stupendous losses of men, the German conquest of Poland, and the sufferings of the masses, produced, within the first year, grave discontent; and in August, 1915, all of the groups in the Duma except the Reactionaries and the Social Democrats drew together in a "progressive *bloc*" whose purpose was to urge upon the government immediate and drastic reforms. Strong demand was forthwith made for the extension of the suffrage and for a full parliamentary scheme of government.[2] But, far from heeding it, the tsar allowed himself to be swayed in the direction of extreme reaction, and a breach arose between the government and the reformers which steadily widened as the second year of the war advanced. The winter of 1916–17 brought matters to a crisis. The tsar was completely dominated by his wife, who, in turn, was ruled by the fanatic Rasputin; ministers and bureaucrats brazenly bartered with the enemy and lined their pockets with the proceeds of their treachery; gross and willful mismanagement in government circles cost the lives of countless thousands of soldiers and brought untold suffering to other thousands and to the civilian population in all parts of the country; when, after a protracted interval, the Duma was reassembled in February, 1917, the government met its protests with obvious determination to make no concessions and to stamp out the entire liberal movement. Manifestly, the preservation of the autocracy and of the privileges of the bureaucracy had displaced the winning of the war as the chief concern at court.

[1] The attitude of the parties, and of the people generally, toward the war is described in G. Alexinsky, *Russia and the Great War*, trans. by B. Miall (New York, 1915). See also R. W. Child, *Potential Russia* (New York, 1916).

[2] See H. N. Brailsford, "Russia in Transition," in *New Repub.*, Oct. 9, 1915.

The upshot was revolution. When, after two weeks, the Duma was prorogued, it refused to disband and, instead, declared itself the sole constitutional authority in the country. The spirit of mutiny spread to the troops in the capital, and a self-constituted Committee of Workmen set about rousing the industrial laborers to revolt. The leaders of the Duma, representing chiefly the business and professional classes, did not relish a proletarian revolution, and they urged the government to the utmost of their ability to forestall the impending uprising by adopting a liberal and conciliatory policy. But the court reactionaries would not be convinced; besides, the movement had probably gone too far to be stopped. The soldiery at the capital went over almost solidly to the side of the revolutionaries; the great prison fortress of Saint Peter and Saint Paul was besieged and captured; bureaucrats were arrested and slain or imprisoned; the great armies in the field declared for an end of the old régime; the tsarist government collapsed with almost incredible suddenness and completeness. On March 15, Nicholas II yielded to advice and abdicated. Hoping to save the dynasty, he designated his brother, the Grand Duke Michael, as his successor. But the latter announced that he would not seek to mount the throne unless the Russian people should express their desire by a plebiscite that he do so, and meanwhile he counseled all elements to submit to the provisional government which had assumed control of affairs. This government was a ministry chosen from and responsible to the Duma, and presided over by Prince Lvov, a Constitutional Democrat. It promptly won the recognition of the United States and the powers of the Entente, and it commended itself to liberals throughout the world by the manifest sincerity with which it proclaimed and protected the rights of the people and especially of the subject nationalities.

The political regeneration of Russia was, however, too vast an undertaking to be carried out so quickly and so easily. The relaxing of the authority of the old order inevitably became the signal for particularistic manifestations, long repressed, against the unity of the state; inexperienced in self-government on a large scale, the people were sure to stagger under the suddenly imposed responsibilities of the new régime; the habit of hating the tsarist government had bred a distrust of, and impatience with, government in general. The result was that the provisional government of Lvov ran at once into insurmountable difficulties. These cannot be described here; but the fundamental trouble arose from the fact that while the new government was a bourgeois govern-

ment which proposed to reorganize Russia on a constitutional basis after the fashion of western states, the people at large — at all events those elements that had the disposition and the means to make themselves heard — cared little about that sort of thing, and looked rather to some form of loose economic-political organization which would bring power mainly or entirely into the hands of the working classes. From the outset the provisional government was meagerly supported outside of the capital, while extra-legal soviets, *i.e.*, "councils," of workmen's, soldiers', and peasants' deputies — organized on the model of the Petrograd Committee of Workers — drew the interest and support of the masses. These soviets were dominated by Socialist Revolutionaries and Social Democrats; they fully understood that the Lvov government aimed at middle-class rule; they would be satisfied with nothing less than the complete economic and social transformation which would flow from unrestricted control by the workers.

As weeks passed, the breach between the provisional government and the elements represented in the soviets steadily widened, and in early summer it became necessary, in order to hold things together at all, to open the ministry to persons who represented, or at all events were in sympathy with, the soviet cause.[1] This intensified the internal differences from which the government already suffered and left it more irresolute than before. The soviets steadily grew more outspoken in their opposition to the prolongation of the war;[2] propaganda of a dozen sorts — pacifist, pro-German, nationalist — produced appalling discord and unrest; the country fast slipped into anarchy. The situation was altogether favorable for the rise to power of any party or group of men which could put itself unreservedly behind a definite program and organize popular feeling in its own behalf. Such a party promptly appeared in the Bolsheviki.[3]

[1] Kerensky, however, although supporting the soviet aims, was a member of the provisional government from the beginning.

[2] They demanded peace on the basis of no annexations, no indemnities, and the self-determination of peoples.

[3] The revolution of March, 1917, and the failure of the provisional government are described in Olgin, *The Soul of the Russian Revolution;* E. P. Stebbing, *From Czar to Bolshevik* (New York, 1918); E. A. Ross, *Russia in Upheaval* (New York, 1918); A. S. Rappoport, *Pioneers of the Russian Revolution* (New York, 1918); B. Ghourko, *War and Revolution in Russia* (New York, 1919); A. J. Sack, *The Birth of Russian Democracy* (New York, 1919); E. Vandervelde, *Three Aspects of the Russian Revolution* (New York, 1919); I. D. Levine, *The Russian Revolution* (New York, 1917); and E. J. Dillon, *The Eclipse of Russia* (London, 1918). A valuable first-hand account is A. F. Kerensky, *The Prelude to Bolshevism* (New York, 1919), and an excellent analysis of the party alignments is G. Demorgny *Les partis*

The Bolshevist Revolution of November, 1917. — Russian socialism in the earlier twentieth century was organized in two great parties, the Socialist Revolutionaries and the Social Democrats. The one had as its main objective the transfer of the land from the landlords to peasant proprietors, under a scheme of private ownership with certain coöperative features. It was, therefore, largely a rural party, and not only was indigenous but had practically no counterpart in any other country. The Social Democratic party, on the other hand, embraced chiefly the urban workers, and, adhering to the Marxist ideas of a class struggle and the ultimate supremacy of the proletariat, was broadly similar to the socialist parties of western Europe. Both parties were split up into moderate and radical factions, each tending to coalesce with the corresponding faction of the other party. The moderate and radical wings of the Socialist Revolutionaries were designated as the Right and the Left. In the Social Democratic ranks the moderates were known as "Mensheviki," *i.e.*, "the minority," and the extremists as "Bolsheviki," *i.e.*, "the majority." The differences between these two factions of Social Democrats were substantially those which separated the "reformist" and orthodox wings of socialism in Germany, France, and Italy. That is, the Mensheviki believed that the socialistic state could be attained only by gradual steps and favored coöperation with other progressive and radical elements; while the Bolsheviki would be satisfied with nothing short of a sudden, cataclysmic, violent, and international transition to the new order.

Although termed the "majority," the Bolsheviki originally were only a small minority of the whole body of Russian socialists, and they formed no very important element in the soviets as first organized. The Mensheviki heavily preponderated. The Bolsheviki, however, were unencumbered by any relations with or responsibility for the provisional government; in Lenin and Trotzky[1] they had two demagogic and unscrupulous but remarkably adroit and successful leaders and agitators; and they had a program which could be counted on to prove attractive to an

politiques et la révolution russe (Paris, 1919). Among useful magazine articles may be mentioned P. Vinogradoff, "Some Impressions of the Russian Revolution," in *Contemp. Rev.*, May, 1917; E. J. Dillon, "The Russian Upheaval," in *Fort. Rev.*, May, 1917; S. N. Harper, "The Rise of Russian Democracy," in *World's Work*, May, 1917; A. Petrunkevitch, "The Russian Revolution," in *Yale Rev.*, July, 1917; E. A. Ross, "The Roots of the Russian Revolution," in *Cent. Mag.*, Dec., 1917; and S. Litman, "Revolutionary Russia," in *Amer. Polit. Sci. Rev.*, May, 1918.

[1] Lenin, whose real name was Vladimir Ulyanov, belonged by birth and training to the nobility, but had been a lifelong socialist. Trotzky, whose true name was Bronstein, was a middle-class Moscow Jew.

uneducated, impractical people whom war-weariness had made unusually susceptible to emotional appeal. The main points in this program were: an immediate armistice, to be followed by peace made by representatives of the proletariat; repudiation of the national debt; immediate confiscation of the landed estates in the interest of the peasants, who were to be organized in soviets; full and immediate control of factories and mines by the workers; nationalization of monopolies; government control of all production and distribution; and the erection of the soviets into a government based on the dictatorship of the proletariat. Clever propaganda on these lines brought the Bolshevists, by the close of the summer of 1917, into control of most of the soviets; and the futile efforts of the provisional government, rendered the more hopeless by recurring military reverses, foreshadowed both the collapse of Russia in arms and the complete transfer of power to the Bolshevist-controlled councils. An attempt to seize the reins in July failed, and the provisional government, henceforth under Kerensky's leadership, did what it could to keep the military and political situation in hand. But every plan of rehabilitation failed; both the army and the state were fast disintegrating. Elections to a new Congress of Soviets, to be convened at Petrograd on November 7, gave the Bolsheviki a heavy majority of the seven hundred seats, and the meeting of this body was made the occasion of the long-awaited *coup*. On the night of November 6 the Red Guards occupied the principal government buildings; the local garrison remained inactive or went over to the revolution; on the morning of the 7th the members of the provisional government — Kerensky alone escaping — were placed under arrest; and on the next day the Third All-Russian Congress of Soviets "regularized" what had been done by formally proclaiming the Russian Socialist Federal Soviet Republic and handing over the conduct of affairs to a Council of People's Commissioners, with Lenin as premier and Trotzky as "people's commissioner for foreign affairs."

The new order was clearly a product of force and craft. It was established by no mandate of the Russian people, and the election of a National Constituent Assembly, which was forthwith carried out on a basis of direct, universal, and secret suffrage, showed that it commanded only minority support.[1] Large parts of the former empire utterly refused to accept it, and even where its hold was strongest, *i.e.*, in the portions of European Russia centering around Moscow, its tenure was precarious. The

[1] Anon., "Electing the Constituent Assembly," in *New Statesman*, Jan. 19, 1918.

elements of opposition were, however, discouraged, mutually suspicious, and hopelessly disorganized; and by the free use of arms and of terrorism comparable with that of the tsarist régime at its worst, the new government steadily maintained its position up to the time when these pages were written (July, 1920).

The first great objects of the new rulers were three: to make peace with the Teutonic powers, to effect an immediate social and economic revolution, and to institute a permanent scheme of government based on the system of soviets. To attain the first of these ends, the government proposed to all of the belligerents a three-months armistice, published the secret treaties found in the Russian archives, signed an independent truce with the Teutonic powers, and, prostrating itself in the dust, accepted the treaty of Brest-Litovsk, which reduced the Russian republic to substantially the area of the medieval grand-duchy of Muscovy. The social and economic revolution was ushered in, in so far as decrees backed by force could do it, by orders transferring the control of all industrial establishments to the workers, nationalizing all land and turning it over to the people who tilled it, appropriating mines, waterways, and forests, disestablishing the Russian Church, repudiating most of the national debt, and in sundry ways withdrawing rights from the aristocracy and bourgeoisie and setting up the long-promised dictatorship of the proletariat.

The third policy found definitive expression in a written constitution, adopted by the Fifth All-Russian Congress of Soviets, in session at Moscow,[1] on July 10, 1918. This congress was a purely Bolshevist gathering. The Constituent Assembly elected in the previous November had been suppressed because it was dominated by Socialist Revolutionaries; the soviets in all parts of the country had been purged of non-Bolshevist members, or broken up; the Fifth Soviet Congress consisted exclusively of delegates from the federated and bolshevized soviets. The new constitution was, therefore, the work of a purely revolutionary assemblage; and it was put into effect without either a popular referendum or ratification by local bodies of any sort.[2]

[1] The capital was moved thither from Petrograd in February, 1918.

[2] The literature on the Bolshevist revolution and the state of affairs in Russia under Bolshevist rule is very extensive. Much of it is of journalistic origin and based on hasty and partial observation. Most of it, too, is frankly pro-Bolshevist or anti-Bolshevist. Among the most dispassionate books on the subject are J. Spargo, *Bolshevism versus Democracy* (New York, 1919); E. Antonelli, *Bolshevik Russia* (New York, 1919); W. T. Goode, *Bolshevism at Work* (New York, 1920); and F. Buisson, *Les Bolcheviki, 1917–1919; faits, documents, commentaires* (Paris,

The Constitution of 1918 and the Soviet System of Government. — The constitution was based on an extensive series of declarations, rules, and decrees promulgated by the Bolshevist authorities after the *coup* of November, 1917.[1] The most important of these antecedent documents — a "Declaration of the Rights of the Toiling and Exploited People," drawn up by Lenin and Trotzky, and unfavorably considered by the Constituent Assembly in the spring of 1918 — became, indeed, Article I of the definitive instrument. The remaining five articles contain more that was new. Yet, they, too, represent largely an assembling of previous measures and proposals. Article II consists of general provisions pertaining to property, labor, education, citizenship, and religion; Article III provides for the structure of central and local government; Article IV covers the suffrage and the electoral system; Article V is devoted to the budget; and Article VI contains specifications concerning the republic's coat of arms and flag. The six articles are divided into seventeen chapters, and these, in turn, into ninety sections. The aggregate length somewhat exceeds that of the constitution of the United States.[2]

Aside from the novel style of government for which it provides, the constitution presents some interesting characteristics. The first is its curiously devised guarantees of individual rights. As a constitution sprung from revolution, the instrument naturally abounds in provisions upon this subject. The rights which are guaranteed are, however, those of the "laboring and exploited people" only. It is true that all citizens are declared to have equal rights.[3] But the context shows that this is meant to prevent discriminations on grounds of race and nationality, rather than other sorts of discrimination; and from first to last

1919). First-hand expositions of Bolshevist principles and policies are contained in L. Trotzky, *Our Revolution; Essays on Working-class and International Revolution, 1914-1917* (New York, 1918), and *The History of the Russian Revolution to Brest-Litovsk* (London, 1919); N. Lenin, *The Russian Revolution* (New York, 1917), and *The Soviets at Work; the International Position of the Russian Soviet Republic and the Fundamental Problems of the Socialist Revolution* (New York, 1919). Useful articles include A. Shadwell, "Bolshevism according to Lenin and Trotzky," in *Nineteenth Cent.*, Feb., 1919; J. Zeitlin, "The Conflict of Parties in the Russian Revolution," in *Univ. of Ill. Bull.*, March 3, 1919; and S. Perlman, "Bolshevism and Democracy," in *Pub. of Amer. Sociolog. Soc.*, XIV, 216-225.

[1] Translations of most of these documents will be found in *International Conciliation*, No. 136 (March, 1919), 5–71.

[2] An English version of the constitution, embodying certain revisions, is printed in *N. Y. Nation*, Jan. 4, 1919, pp. 8–12, and in *International Conciliation*, March, 1919, pp. 72–90.

[3] Sec. 22.

it is the workers, and they alone, whose rights are named and guaranteed. They are to enjoy freedom of expression, religion, assembly, organization and united action, and education. Other classes of people are not recognized as having any rights at all; although it must be added that there is a certain cheerless logic in this, in that the constitution designates "the complete abolition of the division of the people into classes" as one of the main objects of the new order, and furthermore undertakes to make workers of the entire able-bodied population. A second outstanding feature of the constitution is the emphasis placed upon matters of public policy, as distinguished from the structure and powers of government. The constitution is intended, indeed, to sum up and give unity to the social and economic revolution, quite as much as to provide a plan of political organization. Hence it abolishes private ownership of land, declares forests and mines national property, decrees ultimate national ownership of all other means of production and transportation, disestablishes the Church, secularizes education, proclaims that "he shall not eat who does not work," enjoins universal military training, and vests all power in "the working classes, united in urban and rural soviets." Even foreign policy is included: the speedy establishment of "a general democratic peace without annexations or indemnities"; full publicity of international agreements and relationships; recognition of Finnish independence; an end of European exploitation of the "toiling populations" of Asia and other parts of the outlying world.

The system of government for which the constitution provides likewise presents a number of striking features. In admitting to political power only a portion of the adult population it, of course, is in no wise unique. But the basis on which the line is drawn between the enfranchised and the unenfranchised is without precedent or parallel. The fundamental principle is that only people who can be reckoned as "producers" shall have a share in the control of public affairs. Accordingly, the right to vote and to hold office is conferred on persons of both sexes who have reached the age of eighteen and who (*a*) "have acquired the means of living through labor that is productive and useful to society," or (*b*) are "engaged in housekeeping which enables the former to do productive work," or (*c*) are peasants or agricultural laborers who employ no help for the purpose of making profits, or (*d*) are in service in the army or navy of the Soviet Republic, or (*e*) are persons of any of these categories who "have to any degree lost their capacity to work." Resident

aliens, if engaged in labor, enjoy political rights equally with citizens. On the other hand, the following classes, chiefly, are excluded from the suffrage: (1) persons who employ hired labor in order to obtain from it an increase of profits, (2) persons who live from income without working, whether interest from capital or revenues from property, (3) merchants, tradesmen, and brokers, (4) monks and clergy, (5) employees and agents of the former police and members of the old gendarme corps. Not only the former aristocracy, but the bourgeois business and professional classes are, therefore, practically excluded from political power. The soviets rule; and the soviets are composed exclusively of the delegates of the non-capitalistic "producers."[1]

This suggests a second notable feature of the governmental system, namely, the displacement of representation on a geographical basis by representation on an occupational basis. The fact has been noted in earlier portions of this book that in various western countries there is a growing demand that political organization shall be made to correspond more closely to social grouping and occupational interest.[2] In the Russian Soviet constitution this idea finds full and concrete expression. The urban soviets are composed, not of councilors elected from wards or other territorial divisions, but of delegates chosen by the trade unions and other groups of workers in the town.[3] The rural soviets are similarly constituted, although the occupational homogeneity of the country-dwelling population somewhat obscures the principle. Even the provincial soviets, in which urban and rural delegates are brought together, are organized by sections — peasants, industrial workers, and soldiers, and also Cossacks in regions which they inhabit. Only in the All-Russian Congress of Soviets, at the top of the soviet pyramid, does the geographical basis clearly prevail.

It follows from what has been said that the soviet system of government is not, and makes no pretense of being, democratic. There was a time when the ideal of Russian liberalism was democracy on the lines worked out in England, France, and other western countries. The reformers in 1904–05 gave parliamentary

[1] J. R. MacDonald, *Parliament and Revolution* (London, 1920), Chap. v.

[2] This is a main proposal of the syndicalists in France and of the gild socialists in England. See B. Russell, *Proposed Roads to Freedom* (New York, 1919), 56–85, and G. D. H. Cole, *The World of Labour* (London, 1913).

[3] The soviet in this form must not be understood to have originated in 1917. During the revolutionary movement of 1904–05 the workingmen of Petrograd, Moscow, and other cities set up soviets, similarly organized on the basis of industrial groups.

government first place in their demands. Moderate liberals, indeed, still looked, in 1917, to this sort of readjustment, and the provisional government of Lvov expected to work gradually in this direction. However, after 1906 the radical-minded elements grew distrustful of the conventional democratic program. They deplored the constant tendency of the bourgeois reformers to compromise with autocracy; they noted that the radicals in western lands were not satisfied with the fruits of democracy, but instead were clamoring for a different type of political organization; they became obsessed with the idea that the only road to freedom and well-being for themselves was the dictatorship of the proletariat.[1] Accordingly they repudiated the ideal of a great nation-wide democracy and set before themselves the image of a state composed solely of workers and governed exclusively in the workers' interest; and when a singular turn of fortune brought them into power, they lost no time in turning this image, as far as they were able, into reality.

The Structure of Government. — The structure of the new governmental system is somewhat complex and not wholly symmetrical. Its dominating feature is a pyramidal scheme of soviet congresses, culminating in an All-Russian Congress, and supplemented with commissars and other executive and administrative officers and committees. The primary unit is the village soviet in rural portions of the country, the city soviet in urban centers. The members of the village soviet are chosen by the workers of the village commune. All village soviets in the same *volost*, or township, elect a *volost* soviet, in the proportion of one delegate for every ten members of the inferior body, and all *volost* soviets in the same *uyezd*, or county, choose a county soviet, at the rate of one delegate for every thousand inhabitants. The city soviet is, of course, elected by the primary assembly of urban workers. Representatives of the rural and urban soviets are first brought together in the soviet of the *gubernia*, or province, in which the country districts are represented at the rate of one delegate for every ten thousand inhabitants and the urban areas in the proportion of one for every two thousand voters.[2] Still

[1] The fact should be noted that many serious-minded students of government, in Russia and elsewhere, question, as a recent writer puts it, "whether in our differentiated modern society a truly representative government may be reared on a basis of an economically amorphous mass of voters who are united by no other bond than residence in the same geographic locality, but are separated by the fundamental differences which flow from difference in occupation." E. A. Ross, in *Amer. Polit. Sci. Rev.*, May, 1920, p. 320.

[2] The constitution curiously speaks in terms of inhabitants when dealing with rural populations and in terms of voters when urban populations are mentioned.

above the provincial soviet stands the *oblast*, or regional soviet, composed of representatives of the urban and provincial (or county) soviets, who are chosen on the basis of one for every twenty-five thousand rural inhabitants and one for every five thousand voters in cities. Finally, the All-Russian Congress is composed of delegates of the city soviets, at the rate of one for every twenty-five thousand voters, and delegates of the provincial soviets at the rate of one for every one hundred and twenty-five thousand inhabitants. Urban populations are given the advantage of being represented in the supreme body, not only indirectly through the provincial soviets, but also by delegates specially elected for the purpose. Members of soviets are not chosen for a term, but are subject to recall by their constituents at any time; hence there are no fixed dates for elections throughout the country, or even in a given subdivision. Soviets of all grades are charged with carrying out "all orders of the respective higher organs of the Soviet power," taking all steps towards "raising the cultural and economic standard of the given territory," and coördinating all soviet activity in their respective jurisdictions. Village soviets are required to meet at least once a month, county and provincial soviets at least once every three months, and regional soviets at least twice a year. In all areas the soviet is the supreme power; but it elects an executive committee which carries out its decisions and, in intervals between the sessions of the soviet congress, acts as the highest governing authority.

In the All-Russian Congress, indirectly representing the entire electorate, are gathered all ultimate powers of sovereignty. This body has full authority to amend the constitution, establish and change boundaries, declare and carry on war, make treaties, cede territory, manage foreign relations, levy taxes, make loans, maintain armies and navies, grant and revoke citizenship, fix the rights of aliens, and regulate weights and measures; and by the most extraordinary "sweeping clause" to be found in any written constitution the Congress and the Central Executive Committee which it elects are empowered to "have charge of all other affairs which, according to their decision, require their attention." [1] By the terms of the constitution the Congress meets at least twice a year. Between sessions supreme power rests in the All-Russian Central Executive Committee, which is a body of not exceeding two hundred members, chosen by the Congress. Indeed, this Executive Committee continuously wields legis-

[1] Art. III, Chap. 9.

lative and supervisory powers of such proportions that it may properly be conceived of as a sort of subordinate parliament, chosen by and fully responsible to the Congress, yet enjoying substantial autonomy. Meetings of the Congress are called by the Committee, either on its own initiative or at the request of local soviets representing not less than one third of the population of the republic.

Subject to ultimate control by the Congress, the Central Executive Committee has full charge of the nation's affairs. With a view to the performance of necessary executive and administrative tasks, it appoints and controls a Council of People's Commissars, which is, in effect, a ministry composed of the heads of seventeen executive departments named in the constitution, *e.g.*, foreign affairs, army, navy, finance, justice, labor, social welfare, public health, commerce and industry, agriculture, and transportation. This ministry is responsible, singly and collectively, to the Executive Committee, and it must refer to that body all orders and resolutions " of great political significance." Every commissar, or minister, is assisted by a " college," or committee, whose members are appointed by the Council.[1]

Two or three major facts may be noted, in conclusion, about this scheme of government. The first is that there is practically no recognition of the doctrine of separation of powers. The All-Russian Congress is the repository of governmental powers of every kind and in unrestricted measure; the Central Executive Committee is at the same time an executive authority and a legislature; there is no provision whatsoever in the constitution for a judiciary. A second fact is that representation, and hence popular control, is far less direct than in western systems of government. Peasant voters select a village soviet, which selects representatives in the *volost* soviet, which elects delegates to the provincial soviet, which sends representatives to the All-Russian Congress at Moscow, which, finally, elects the commissars who have charge of the country's foreign relations, finances, and other great interests. The commissar is far removed from the peasant elector; and the system offers repeated chances for the commissars and other government leaders to apply influence or pressure to deflect the successive soviets farther and farther from the people's will. Furthermore, as a recent writer has pointed out, unless the principle of proportional representation is strictly adhered to at every stage, the minority strains must disappear from the skein and the Central

[1] Art. III, Chap. 8.

Executive Committee will be composed entirely of the majority party.

This leads to the mention of a third salient fact, namely, that the system has thus far been operated exclusively in the interest of a single party and has been twisted and distorted to meet the purposes of that party. Sovietism and bolshevism triumphed together, and the soviets have been the means through which the party of Lenin and Trotzky kept itself in power. But the form of government and the party are two different things. The merits of sovietism are open to question; probably the world will refuse to subscribe to the principles upon which the scheme is based. But it should be recognized that the plan has had no fair trial in Russia. From first to last the Bolshevists systematically broke up soviets that were not of their way of thinking, manipulated elections so as to assure the victory of government candidates, completely suppressed freedom of speech and of the press, and used all the forces and arts of the old tsarist régime to perpetuate their own absolutist rule — the rule, it may be added, of, at the most, some six hundred thousand people in a total population of one hundred and twenty millions. The chief fault of sovietism may indeed prove to be that it lends itself peculiarly to that gravest of all political abuses, the tyranny of minorities.[1]

[1] For a fair-minded appraisal of the new régime in Russia by an English liberal, see B. Russell, "Soviet Russia — 1920," in *N. Y. Nation*, July 31 and Aug. 7, 1920. Further discussion will be found in books mentioned on p. 747.

INDEX

Abgeordnetenhaus. See House of Representatives (Prussia).
Abtheilung, in Prussian *Landtag*, 666.
Acland Committee, report, 302.
Action Libérale, origins and policies, 487; gains in 1912, 488.
Act of Mediation, 558–559.
Act of Security, 114.
Act of Settlement, 39, 59.
Adjoints, become elective, 469; functions, 478.
Administration. See Local Government.
Administrative Law, in England, 211; in France, 459–460.
Admiralty Board, in Great Britain, 77.
Alcohol, monopoly in Switzerland, 569.
Alexander II, liberal ideas and policies, 739.
All-Russian Congress of Soviets, composition, 752; powers, 752–753.
Alsace-Lorraine, representation in Bundesrath, 638; representation in Reichstag, 643.
Amtsgericht, 652.
Apology of the Commons, 25.
Appeals, in English courts, 213–219; in French courts, 456–458; in German courts, 652–653.
Appellate Jurisdiction Act, 143.
Army administration, Great Britain, 78–79; in German Empire, 632–633.
Arrondissement, as area for election of deputies, 412, 418–421; established, 468; organization, 474–475; as a judicial area, 457.
Asquith, Herbert, on woman suffrage, 103; becomes premier, 254; proposes compromise on Irish question, 294; arranges party truce, 314; forms coalition ministry, 315; demands execution of Home Rule Act, 320; opposes election of 1918, 324; rallies Independent Liberals, 331; reëlected to Parliament, 332.
Astor, Lady, elected to Parliament, 114.
Astor, Viscount, compelled to accept seat in House of Lords, 142.
Attorney-General, in Great Britain, 83.
Australia, political development, 343; governmental system, 343–344.
Austria, influence in Italy, 504; driven from Italy by Napoleon, 505–506; recovers power in Italy, 509; loses Lombardy, 514; loses Venetia, 515; holds presidency of German Confederation, 610; loses leadership of Germany to Prussia, 614–615; excluded from German confederation, 616.

Balfour, premiership, 249; resigns, 252.
Ballot, introduced in English elections, 136; use in France, 415–417; form in France under the law of 1919, 425–427.
Ballottage, in France, 416.
Ballottaggio, in Italy, 529.
Bavaria, reserved rights, 627.
Bebel, August, opposes socialist opportunism, 492.
Benedict XV, reiterates papal claim to temporal power, 543; sanctions formation of People's party in Italy, 551.
Bernstein, Edward, advocates socialist revisionism, 700.
Bethmann-Hollweg, refuses to admit responsibility to Reichstag, 706–707; promises electoral reform, 707; resigns, 707.
Bezirksamman, in Switzerland, 585.
Bill-drafting, in Great Britain, 183.
Bill of Rights, 32–33.
Birmingham caucus, 269.

Birrell, Augustine, introduces education bill, 311.
Bismarck, Otto von, policies, 615; reconstructs local government in Prussia, 668; seeks to repress socialism, 687–688.
Bloc National Républicain, in France, 499–500.
Board of Agriculture, in Great Britain, 85.
Board of Education, in Great Britain, 84–85.
Board of Trade, in Great Britain, 83–84; control over local affairs, 228.
Board of Works, in Great Britain, 85.
Bolsheviki, principles and aims, 745; carry out revolution, 746; policies as rulers, 746–747; frame republican constitution, 747–748.
Bordeaux, seat of French government removed from, 376.
Borough, in early England, 4; early suffrage in, 22; suffrage at opening of nineteenth century, 116; redistribution of parliamentary representation in 1832, 119–120; suffrage changes in 1867, 121; redistribution of seats in 1885, 123; government at opening of nineteenth century, 222; Municipal Corporations Act of 1835, 222–224; the council, 234–235; the mayor, 234; powers, 235.
Bossuet, advocates divine right of kings, 358.
Brest-Litovsk, treaty of, 747.
Briand, premier in France, 497.
Broglie, Duc de, submits draft of constitution, 379.
Bryce, Lord, presents report on upper chamber reform, 156–158.
Budget (U. K.), preparation and nature, 190–191; procedure in France, 440–441.
Bülow, circumstances of retirement in 1909, 637, 705.
Bundesgericht, in Switzerland, composition, 599; organization and jurisdiction, 600–602.
Bundeskanzler, of North German Confederation, 617.
Bundespräsident, of North German Confederation, 617, 628.
Bundesrath, of North German Federation, 617; composition after 1871, 637–638; organization, 639; procedure, 640; functions and powers, 641–642; undemocratic character, 642–643; special position of Prussia in, 655.
Bundestag, of German Confederation, 610; of North German Confederation, 617.
Bureaux, in French Parliament, 432–436.
Butt, Isaac, father of Home Rule movement, 283.

Cabinet (Great Britain), origins, 37–38; need of, 39; development, 39–40; relation to Privy Council, 93–94; composition, 94–95; increasing size, 95–96; appointment of premier, 96–97; selection of other members, 97–100; secrecy of proceedings, 101–102; leadership of premier, 102–104; central position, 105–106; reorganization during Great War, 106–111; increased power in legislation, 178–180; measure of immunity from parliamentary control, 180–182.
Cabinet (France), adopted from England in 1814, 369; rehabilitation in 1871–75, 376–378; relation to president, 396; meetings and functions, 400–401.
Cabinet (Italy), 522–525.
Campbell-Bannerman, leader of Liberal party, 250; premiership, 252–253.
Canada, acquires self-government, 340; governmental system, 340–342.
Canton (France), created in 1789–90, 466; becomes judicial area, 468; general character, 475.
Canton (Switzerland), beginnings, 556–557; in 1798, 558; rearranged in 1815, 559; constitutions democratized, 560; question of sovereignty, 566–567; relations to the federal government, 567–571; control over citizenship, 571–572; size and population, 574; powers, 575; the *Landsgemeinde*, 576–579; legislative bodies, 579–580; proportional representation, 580; the referendum, 581–583; the

initiative, 583–584; administrative machinery, 584–586; judiciary, 586.
Carson, Edward, leads Ulsterite opposition to Home Rule, 292–293.
Catholic Conservative party, in Switzerland, 603–605.
Cavour, Count, policies, 513–514; favors elective upper chamber, 527.
Center party, rise in Germany, 687; alliance with Conservatives, 689; status in 1914, 694–695; renamed Christian people's party, 713.
Central Executive Committee, in Russia, 752–753.
Central Office, in English party organization, 267–268.
Chamber of Deputies (France), ordained in constitution of 1875, 408; statutory basis, 411–412; growth of membership, 412–413; suffrage, 413; term of members, 414; qualifications, 414–415; electoral procedure, 415–416; electoral reform of 1913, 416–417; question of *scrutin de liste* and *scrutin d'arrondissement*, 418–421; movement for proportional representation, 421–422; electoral reform bill of 1912, 422–423; electoral law of 1919, 424–427; place of meeting, 428; sessions, 429–430; status of members, 430–432; compensation, 432; officers, 432–433; bureaus and committees, 433–436; procedure on non-financial bills, 436–439; budgetary procedure, 440–441; control over administration, 442–444; interpellation, 444–445; disuse of power of dissolution, 445–446.
Chamber of Deputies (Italy), election of members, 529; development of suffrage to 1912, 529–531; electoral law of 1912, 531–532; organization and procedure, 533–534.
Chamberlain, Joseph, breaks with Liberal party, 247; advocates tariff reform, 251, 298–299.
Chancellor, origins of office in Germany, 617, 633; functions, 634; relation to ministries, 634–635; lack of responsibility, 635–637, 704–706; in German republic, 729–730.
Chancellor of the Exchequer, growth of powers, 75; presents budget, 190–191.
Chancery, in England, 209.
Charles Albert, grants constitution in Piedmont, 512; abdicates, 513.
Charles II, accession, 28; relation to rise of cabinet, 37.
Chartists, 120–121.
Chief Secretary for Ireland, 286.
Chiltern Hundreds, 115.
Christian People's party, in Germany after 1918, 713, 733.
Church, established in Ireland, 45; position in England, 303–305; question of disestablishment, 305–306; disestablished in Wales, 306–308; relation to education question, 308–312; status in Italy, 540–543; relation to Italian politics, 549–553.
Circondaro, in Italy, 537.
Cisalpine republic, established, 505.
Cispadane republic, established, 505.
Citizenship, regulation in Switzerland, 571–572; rights in Switzerland, 572–573.
Civil Code, in Germany, 624.
Civil List, in England, 61–62; in Prussia, 659.
Civil Service, earlier need of reform in England, 89–90; stages of reform, 90; present system, 91–92; conditions and problems in France, 404–406.
Clémenceau, opposes electoral reform act of 1919, 424; premiership, 498.
Clergy, representation in British House of Lords, 143–144; status in Italy, 541.
Closure, in British House of Commons, 197–198.
Code Civil, in France, 450.
Code Napoléon, origins, 450; influence outside of France, 450–451; extended to Italy, 508.
Colonies of Great Britain, 336–339; Canada, 339–342; Australia, 343–344; South Africa, 345–346; crown colonies and protectorates, 346–348; India, 349–352; problems of imperial reorganization, 353–356.
Commissaire de police, in France, 478.
Committees, in British House of Commons, 169–170; altered in 1919, 171–172; consideration of public non-

financial bills, 184–185; consideration of money bills, 186–191; increased use, 193–194; on private bills, 195–196; in French Parliament, 434–436.
Committee of Selection, in British House of Commons, 169.
Committee of Supply, in Great Britain, 189.
Committee on Public Accounts, in Great Britain, 186.
Common Law, growth in England, 207–208; relation to statute law, 208; written sources, 209.
Commonwealth, in England, 27–28.
Commune, in France before 1789, 466; rearranged in 1789–90, 466; experiments with decentralization, 467; centralized control restored, 468; central control relaxed, 469; municipal code of 1884, 470; legal status, 475; number and size, 476; the council, 476–477; the mayor, 477–478.
Comptroller and Auditor-General, in Great Britain, 77, 186.
Conservative (Unionist) party, position in House of Lords, 146–148; urges use of referendum, 151–152; ascendancy in early nineteenth century, 241–242; early characteristics, 245–246; second period of dominance, 246–250; takes up tariff reform, 251–252, 255; in elections of 1910, 257; gains in period 1910–14, 258–259; tenets and tendencies, 260–261; composition, 262; geographical distribution, 263–265; the Central Office, 267; local organization, 270; the National Union, 271–272; opposes Irish Home Rule, 284, 292–293; divided on tariff question, 299; position on tariff in 1914, 300; views on land reform, 302; opposes disestablishment 304–308; carry Education Act of 1902, 309–310; defeat education bill in 1906, 311–312; in coalition of 1915, 315–316; successes in elections of 1918, 329–330.
Conservative party, in France, 484–486; in Prussia before 1871, 685; alliance with Center, 689; status in 1914, 693–694; becomes National People's party, 712.
Consolidated Fund, established in England, 76.
Constitution, first written instruments in England, 27–28; meaning of term, 46–47; component elements, 47–50; continuity, 50; power of Parliament to alter, 51–52; in written form as influenced by France, 364–365; of 1791, 1792, and 1793 in France, 366–367; of 1799, 368; of 1814, 368–370; of 1848, 371; of Second Empire, 372–373; adopted by National Assembly in 1875, 379–380; form and character, 381–383; mode of amendment, 383–386; origin of Italian instrument, 516; modes of development, 517–518; contents, 518–519; of 1798 in Switzerland, 557; of 1802, 558; of 1815, 559; of 1848, 561; session in 1874, 561–563; modes of amendment, 582; grants in German states after 1815, 611; conceded in Prussia, 614, 655–656; of North German Confederation, 616–617; revised for purposes of the Empire, 619; contents, 620; mode of amendment, 621; illiberal character of Prussian fundamental law, 657; mode of amendment, 657–658; republican instrument framed in Germany, 718–720; contents and character, 720–722; amendment, 722–723; Bolshevist instrument of 1918 in Russia, 748–753.
Convocations, 304.
Corn Laws, repealed, 243.
Coronation oath, in England, 60.
Corrupt and Illegal Practices Act, 137–138.
Corruption, in English politics at opening of nineteenth century, 116–117.
Council, of French department, 473–474; of *arrondissement*, 474; of commune, 476–478; of Paris, 480; of Italian province, 538; of Italian commune, 538.
Council of State, in France, 460–462.
Council of States (Switzerland), composition, 589–590; functions, 590; powers and procedure, 590–593.

Council of People's Commissars, in Russia, 753.
Council of the Empire, established in Russia, 740.
County (English), early suffrage in, 21; suffrage at opening of nineteenth century, 116; suffrage changes in 1867, 121; in 1884, 123; redistribution of parliamentary representation in 1885, 123–124; justices of the peace, 213–214; historical development, 221; government reconstructed in 1888, 226; two forms to-day, 228–229; the council, 229–230.
County borough, 233.
Court of Chancery, origins, 82.
Court of Conflicts, in France, 462.
Court of Criminal Appeal, in England, 215.
Court of High Commission, 19.
Court of Star Chamber, 19.
Courts (Great Britain), origins, 15–16; of equity discontinued, 210; made more symmetrical, 212; of criminal jurisdiction, 213–215; of civil jurisdiction, 215–217; judicial procedure of House of Lords, 217–218; Judicial Committee of Privy Council, 218–219.
Courts (France), reorganized during Revolution, 453; collegial character, 454–455; appointment and tenure of judges, 455–456; ordinary tribunals, 456–458; administrative tribunals, 460–462; Senate as a high court, 463–464.
Courts (Italy), ordinary tribunals, 534–536; administrative tribunals, 536.
Courts (Switzerland), 599–603.
Courts (Germany), inferior tribunals, 652–653; the *Reichsgericht*, 653; in republic, 731.
Cromwell, Oliver, accepts office of Protector, 28.
Crown. See Kingship.
Crown colonies, in British Empire, 346–347.
Custom, as factor in English constitution, 48–50.
Curia, in medieval England, 5.
Daily Telegraph, sensational interview with Kaiser, 703–704.
Decentralization, in France, 467, 471.
Declaration of the Rights of Man, 363–364.
Deconcentration, in France, 471.
Démocratie Nouvelle, in France, 499.
Department, as area of senatorial elections, 409; established as a local government area, 466; experiments with decentralization, 467; centralized control restored, 468; number, 472; the prefect, 473; the *conseil de préfecture*, 473; the general council, 473–474; proposal to abolish, 482.
Devolution, movement in Great Britain, 201–205.
Diet, in Switzerland before 1798, 557; reconstructed in Switzerland in 1802, 558; and in 1815, 559; decrees dissolution of *Sonderbund*, 561; in German Confederation, 610.
Disestablishment, question in England, 303–306; in Wales, 306–308.
District, urban and rural, in England, 225–227, 231, 232–233.
District and Parish Councils Act, 226–227.
Dublin, Easter rebellion, 317; Irish republic organized, 320.
Duma, established in Russia, 740.

Ebert, Friedrich, forms provisional government in Germany, 711; weakness of government, 732–733.
Education, as a party issue in Great Britain, 308–309; Act of 1902, 309–310; bill of 1906, 311–312.
Education Board established, 84–85.
Edward I, convokes the Model Parliament, 11–12.
Edward VII, participation in public affairs, 65.
Egypt, establishment of British control, 347–348; nationalist movement, 348.
Elections, how carried out in Great Britain, 134–136; returning officers, 135; polling, 135–136; contests, 137; regulation of expenses, 137–139; methods in France, 415–416; re-

forms in 1913, 416–417; procedure under law of 1919, 425–427; methods in Italy, 529–532; in Swiss cantons, 577–581; in Swiss national government, 587–590; of members of German Reichstag, 643–645; of members of Prussian House of Representatives, 662–665; in German republic, 726–727.

Elizabeth, dealings with Parliament, 20.

Emperor, office created in Germany, 618, 628; privileges, 629; legislative powers, 629–630; judicial functions, 630; executive functions, 630–631; control over foreign relations, 631–632; control over armed forces, 632–633.

England, political importance, 1; Anglo-Saxon institutions, 2–4; political development in Norman-Angevin period, 5–7; *Magna Carta*, 7–9; rise of Parliament, 9–13; growth of powers of Parliament, 13–14; rise of Privy Council, 15; origins of great law courts, 15–16; monarchy under the Tudors, 17–20; parliamentary development in Tudor period, 20–23; conflict of Stuart and parliamentary doctrines, 24–27; Commonwealth and Protectorate, 27–29; monarchy restored, 29–31; Revolution of 1688–89, 31–32; Bill of Rights, 32–33; declining powers of the sovereign, 35–36; rise of the cabinet, 37–40; beginnings of political parties, 40–41; union with Scotland, 41–43; union with Ireland, 43–45; nature of constitution, 46–51; modes of constitutional amendment, 51–52; personal rights, 54–55; distribution of powers of government, 55–57; title and succession to throne, 59–60; civil list, 61–62; distinction between crown and sovereign, 62–64; uses of monarchy, 64–68; powers of crown, 68–72; the ministry, 73–74; the Treasury, 74–77; the fighting services, 77–79; the Foreign Office, 79–81; the Home Office, 81; the Lord Chancellor, 81–82; the law officers, 83; the regulative boards, 83–86; administrative reorganization since 1914, 86–89; permanent civil service, 89–92; composition of cabinet, 94–100; cabinet procedure, 100–105; war cabinet, 105–111; composition of Parliament, 113–115; quota of seats in House of Commons, 113, 121, 123, 132; electoral problems at opening of nineteenth century, 115–118; reform act of 1832, 118–120; Chartist movement, 120–121; reform act of 1867, 121–122; reform act of 1884, 122–123; redistribution of seats in 1885, 123; electoral questions from 1885 to 1918, 124–126; woman suffrage movement, 126–127; Representation of the People Act of 1918, 127–134; electoral procedure, 134–137; regulation of campaign expenditures, 137–139; composition of House of Lords, 140–145; breach between House of Lords and nation, 145; proposals for reform of House of Lords, 146–148; House of Lords and money bills, 148–151; Unionists favor referendum, 151–152; Parliament Act, 152–156; surviving questions of upper chamber reform, 156–158; desirable features of upper chamber reform, 158–161; parliamentary sessions, 163–164; officers of House of Commons, 166–168; committees of House of Commons, 169–171; organization of House of Lords, 171–172; payment of members of Parliament, 173–175; Parliament's loss of power to the electorate, 177–178; cabinet and Parliament in legislation, 178–180; cabinet and Parliament in administration, 180–182; parliamentary procedure on public bills, 182–185; procedure on money bills, 186–191; proposed changes of procedure, 191–194; private bills, 195–196; rules of House of Commons, 196–199; procedure in House of Lords, 199–200; parliamentary records, 200–201; problems of devolution, 201–205; continuity of legal development, 206–207; growth of the common law, 207–209; rules of equity, 209–210; general features of judicial system, 210–212;

criminal justice, 213–215; civil justice, 215–217; House of Lords as a court, 217–218; Judicial Committee of Privy Council, 218–219; local government before 1832, 220–222; Municipal Corporations Act, 222–224; local government acts of 1888 and 1894, 225–227; central control of local affairs, 227–228; county government, 228–230; other rural areas, 231–232; borough government, 232–235; government of London, 236–237; importance of parties, 238–241; era of Tory ascendancy, 241–242; era of Whig ascendancy, 243–246; Conservative period to 1905, 246–250; the Liberal revival, 251–253; the Liberals in power, 253–255; elections of 1910, 255–257; parties in the period 1914–20, 257–259; party composition, 260–262; geographical distribution of party strength, 263–266; party organization in Parliament, 266–268; local party organizations, 268–270; national party organizations, 271–275; trade unionism and socialism, 276–278; rise of Labor party, 278–280; influence of labor on legislation, 280–281; relations with Ireland, 281–285; question of Irish Home Rule, 289–290; Home Rule Bill of 1912, 290–295; questions of tariff and taxation, 297–301; land reform, 301–303; problem of disestablishment, 301–306; education question, 308–312; party truce in 1914, 314; coalition government, 315–316; later phases of Irish problem, 316–321; Home Rule Bill of 1919, 321–324; elections of 1918, 324–330; party developments after elections of 1918, 330–335; colonial policy, 336–338; self-governing dominions, 338–346; crown colonies and protectorates, 346–348; relations with India, 349–352; problems of imperial reorganization, 353–356; source of French political liberalism, 361; France copies cabinet system, 369.

Equity, development in England, 209–210.

Erfurt Program, 697–699.

Erzberger, Matthias, attacks Pan-Germans, 707.

Estates General, weakness, 359.

Estimates, preparation and adoption in Great Britain, 186–191; in France, 439–441.

Exchequer, in medieval England, 5.

Expenditures, in English elections, 137–139.

Fabian Society, 277.

Federal Assembly (Switzerland), composition, 587; National Council, 588–589; Council of States, 589–590; powers, 590–592; procedure, 592–593; relation to referendum and initiative, 593–597; elects members of Federal Council, 598.

Federal Council (Switzerland), adoption of plural executive, 597; composition, 597–598; status of president, 598; organization, 598; powers and functions, 599–600.

Federalism, nature of, 53; tendencies in France, 483; beginnings in Switzerland, 556; abolished in Switzerland in 1798, 557; restored in 1802, 558; confirmed in 1815, 559; essential features of, 563–565; applied in Switzerland, 565–567; division of powers in Switzerland, 567–571; relation to Swiss citizenship, 571–573; in North German Confederation, 616–617; in German Empire, 617–619, 621–622; division of powers in Germany, 623–625; survivals in German republic, 723–725.

Federal Pact, in Switzerland, 559.

Fehrenbach, Konstantin, becomes German chancellor, 735.

Fenian movement, 283.

Foreign Office, in Great Britain, 79–81.

Fortescue, Sir John, treatise on English government, 26.

Fortschritt, in Prussia before 1871, 686.

France, government in the Old Régime, 358–360; growth of liberalism in eighteenth century, 360–362; nature and contributions of Revolution of 1789–94, 363–366; Revolutionary constitutions, 366–367; Napoleonic

régime, 367–368; Constitutional Charter of 1814, 368–369; revolution of 1830, 370; revolution of 1848 and Second Republic, 370–371; Second Empire established, 372–373; Second Empire collapses, 374; National Assembly elected, 374; conflict of parties, 376; rehabilitation of cabinet system, 376–378; failure of monarchist programs, 378–379; constitution of Third Republic adopted, 379–381; form and character of constitution, 381–383; constitutional amendments, 383–386; election of president, 388–389; presidential term, 390; immunities of president, 391–393; powers of president, 393–397; composition of ministry, 398–400; ministerial organization, 400–402; ministerial responsibility, 402–404; the civil service, 404–406; experiments with unicameral and bicameral legislatures, 407–408; composition of Senate, 408–411; composition of Chamber of Deputies, 411–412; parliamentary suffrage, 413; term and qualifications of deputies, 414–415; electoral procedure, 415–418; movement for electoral reform, 418–424; electoral law of 1919, 424–427; parliamentary sessions, 428–430; status of senators and deputies, 430–432; parliamentary organization and procedure, 432–436; the legislative process, 436–439; the budget and money bills, 439–441; parliamentary control over administration, 442–443; causes of ministerial instability, 443–447; origins of legal system, 448–449; the great law codes, 449–452; general aspects of judicial system, 452–455; appointment and tenure of judges, 455–456; ordinary courts, 456–457; administrative law, 459–460; administrative courts, 460–462; the Senate as a court, 463–464; local government before 1789, 465–466; reorganization of local government between 1789 and 1814, 466–468; development of local government in nineteenth century, 468–469; general aspects of present system, 469–472; the department, 472–474; the arrondissement, 474–475; the canton, 475; the commune, 475–478; government of Paris, 479–480; problems of administrative reform, 480–483; origins of parties, 484–486; party development to the Great War, 486–489; rise of socialism, 489–492; the Unified Socialist party, 492–496; parties and ministries during the Great War, 496–498; party reorganization after the war, 498–500; elections of 1919, 500–501; summary of party phenomena, 501–503.

Frederick the Great, treatises on government, 609.

Frederick III, liberal ideas, 677.

Frederick William IV, convokes *Vereinigter Landtag*, 612; rejects imperial crown in 1848, 614; grants constitution to Prussia, 614.

Free Church Federation, 305.

Free trade, establishment in England, 243; reaction against, 251.

Garibaldi, Sicilian expedition, 514–515.

Gemeinde, organization in Prussia, 673.

Gemeinderat, in Switzerland, 586.

Généralité, in France before 1789, 466.

George I, accession, 59.

George III, ideas of kingship, 35.

George V, participation in public affairs, 65; calls conference on Irish question, 294.

German People's party, after 1918, 712.

Germany, early liberal movements, 608–609; in Napoleonic era, 610; written constitutions granted, 611–612; liberal movement in 1848, 612–613; failure of movement, 613; constitution granted to Prussia, 614; Prussia assumes leadership, 615; Bismarck's policies and measures, 615–616; establishment of North German Confederation, 616–617; establishment of Empire, 617–618; Imperial constitution framed, 619; contents of constitution, 620; mode of constitutional amendment, 621; federal character of Empire, 621–622; division of powers between Empire

and states, 623–625; the privileged states, 625–627, 654–655; status and privileges of Emperor, 628–629; miscellaneous powers of Emperor, 629–631; Emperor's control over foreign affairs and army, 631–633; the Chancellor, 633–635; absence of ministerial responsibility, 635–637; composition of Bundesrath, 637–639; organization and procedure of Bundesrath, 639–641; functions and powers of Bundesrath, 641–643; composition of Reichstag, 643; electoral system, 644–645; organization and procedure of Reichstag, 645–647; powers and actual status of Reichstag, 647–650; the codes of law, 650–652; the courts, 652–653; the Prussian constitution to 1918, 656–658; king and ministers in Prussia, 658–660; Prussian *Herrenhaus*, 660–661; Prussian *Abgeordnetenhaus*, 661; Prussian electoral system, 661–663; movement for electoral reform in Prussia, 663–666; local government in Prussia, 667–674; reasons for survival of absolutism, 675–676; the Hohenzollern dynasty, 676–678; William II and Prussian doctrine of monarchy, 678–679; status of the army, 680; landholding aristocracy, 681; *Kultur*, 681–683; general aspects of party system, 683–684; early parties, 685–686; rise of the Center, 687; growth of Social Democratic party, 687–689; elections of 1907, 689–690; elections of 1912, 691–692; parties on eve of Great War, 693–695; Social Democratic organization and activities, 696–697; Erfurt Program, 697–699; the revisionist movement, 699–701; Social Democrats and the government, 701–702; *Daily Telegraph* episode, 703–704; Zabern incident, 705–706; movement for political reform during the Great War, 706–708, political changes in the hour of defeat, 708–710; abdication of William II, 711; socialist government established, 711–712; new parties and their programs, 712–713; split in socialist ranks, 713–714; the Spartacists, 715; constituent assembly of 1919, 717; republican constitution framed, 718–720; characteristics of new constitution, 720–722; method of amendment, 722; nature of governmental system, 723–726; the National Assembly, 726–727; the National Council, 727–729; the president, 729; the chancellor and ministry, 729–731; the judiciary, 731–732; elections of 1920, 733–735; change of party situation, 736.

Giolitti, influence in Italian politics, 545–546.

Gladstone, W. E., premiership, 246–247; Home Rule bills defeated, 248–284.

Government of National Defense, in France in 1870–71, 374.

Grand Conseil, in Switzerland, 579–580.

Grand ordonnance, 449.

Grand Remonstrance, 27.

Great Britain, creation of, 41–43; union with Hanover, 59.

Great Council, in medieval England, 6; relation to Parliament, 10–12, 14–15; relation to Privy Council, 15–16.

Grévy, Jules, resignation, 391.

Griffith, Arthur, leader of Sinn Fein, 317.

Guesde, Jules, revives French socialism, 490.

Guillotine, a form of closure, 198.

Hanover, union with Great Britain, 59.

Hansard, T. C., publisher of *Parliamentary Debates*, 201.

Helvetic republic, 557.

Henry II, constitutional development under, 6–7.

Henry VIII, dealings with Parliament, 20.

Herrenhaus. See House of Lords (Prussia).

Hertling, Count von, becomes German chancellor, 708; resigns, 709.

High Court, in England, 214–218.

Hohenzollern dynasty, origins, 676; history, 677; William II as representative, 678–680.

Holy Roman Empire, weakness and end, 609–610.
Home Office, in Great Britain, 81; supervision of local affairs, 228.
Home Rule. See Ireland.
House of Commons (Great Britain), bicameral principle established, 12; development in Tudor period, 21–22; present membership, 113; qualification of members, 113; women made eligible, 114; mode of resigning, 114–115; electoral conditions in early nineteenth century, 115–117; problem of redistribution of seats, 117–118; reform act of 1832, 118–120; reform act of 1867, 120–122; reform act of 1884, 122–123; redistribution of seats in 1885, 123–124; question of plural voting, 125; over-representation of Ireland, 126; woman suffrage, 126–127; war-time movement for electoral reform, 127–129; suffrage provisions of Representation of People Act of 1918, 129–132; other provisions, 132–134; electoral machinery and methods, 134–137; regulation of campaign expenditures, 137–139; control over money bills asserted, 149; prospective relations with House of Lords, 159–161; physical surroundings, 164–166; officers, 166–168; committees, 169–171; privileges of members, 172–173; payment of members, 173–175; consideration of public non-financial bills, 184–185; consideration of money bills, 186–191.
House of Lords (Great Britain), in Tudor period, 21–22; abolished in 1649, 27; restored in 1660, 29; hereditary peers as members, 141–142; representative peers, 142–143; law lords, 143; lords spiritual, 143–144; withdrawal of Welsh bishops, 144; increase in size, 144–145; changed position in nineteenth century, 145; reform proposals to 1909, 146–148; decline of control over money bills, 148–150; rejects Finance Bill of 1909, 150; new proposals for reform, 150–152; Lansdowne's reform bill, 152–153; Parliament Act of 1911, 154–155; question of farther reform, 156–158; desirable features of a reform, 158–159; prospective status, 159–161; physical surroundings, 166; organizations, 171–172; privileges, 172–173; procedure, 199–200; judicial functions and procedure, 217–218; frustrates Liberal measures, 253–255.
House of Lords (Prussia), composition, 660; conservative character, 661; organization and powers, 666–667.
House of Representatives (Prussia), composition, 661; three-class electoral system, 661–663; movement for electoral reform, 663–666; organization and powers, 666–667.
Humble Petitition and Advice, 28.
Hundred, in early England, 4.
Hungerford, Thomas, first known Speaker of House of Commons, 167.

Impeachment, of French president, 392; of other French officers, 404.
Imperial Conference convened during Great War, 108; sessions and character, 355–356.
Imperial federation, plans for, 353–356.
Imperial War Cabinet, 108.
Independent Labor party (U. K.), 277; opposes declaration of war in 1914, 314.
Independent Socialist party, established, 713–714; attitude toward the Great War, 714–715; in elections of 1920, 734–735.
Industrial revolution, effect on party alignments in England, 263–264.
Initiative, origins in Switzerland, 583; use in the cantons, 584; in the federal government, 595–596; results, 596–597.
Intendant, in France during Old Régime, 358, 466.
India, governmental system, 349–351; modifications in 1919, 352.
Instrument of Government, 27–28.
Interpellation, in France, 444–445; in Italy, 523.
Ireland, union with England in 1800, 43–45; quota of seats in House of

Commons, 113, 121, 123; over-representation, 126; quota of seats under Act of 1918, 132–133; representation in House of Lords, 142–143; legal system, 210; defeat of first and second Home Rule bills, 247–248; sources of discontent, 282; dissatisfaction with union of 1800, 283; rise of Home Rule movement, 283–284; governmental system, 286–287; arguments for Home Rule, 287–288; arguments against Home Rule, 289–290; Home Rule Bill of 1912, 290–292; Ulster protest, 292–294; Amending Bill of 1914, 294; Home Rule Act receives royal assent, 295; attitude in early portion of Great War, 316–317; rise of Sinn Fein, 317–318; convention of 1918, 319; elections of 1918, 320, 328–329; republic declared, 320–321; Home Rule Bill of 1919, 321–324; campaign pledges of coalition ministry, 326.

Irish Nationalist party, rise, 283–284; increased power after 1910, 285; attitude on Home Rule Bill of 1912, 291; opposes division of Ireland, 294; demands enforcement of Home Rule Act, 318; routed in elections of 1918, 320, 329; opposes Home Rule Bill of 1919, 324.

Italy, political condition in eighteenth century, 504; Napoleonic changes, 505–509; restoration of 1814–15, 509–511; revolutions of 1821, 511; revolutions of 1848, 511–512; national unity achieved, 513–516; nature of constitution, 516–519; the crown, 520–522; composition of ministry, 522; functions and status of ministers, 522–525; composition of Senate, 525–526; weakness of Senate, 526–527; proposed reforms, 527–528; composition of Chamber of Deputies, 529; development of suffrage, 529–531; electoral law of 1912, 531–532; parliamentary organization, 533; parliamentary procedure, 533–534; the judiciary, 534–537; general features of local government, 537; the province, 537–538; the commune, 538–539; law of Papal Guarantees and status of the church, 540–541; papal resistance to the state, 542–543; rise of political parties, 543–544; character of party politics, 545–546; Republican party, 546; Radical party, 546; growth of socialism, 547–549; re-entrance of Catholics into politics, 549–552; People's party, 552; elections of 1919, 552–553.

James I, views on government, 24.

James II, overthrow of, 31.

Jaurès, Jean, on socialist aims in France, 491–492; opposes France's entrance into Great War, 496.

Jenks, Edward, on the uses of Kingship in England, 67–78.

John, grants the Great Charter, 7.

Judicial Committee, of British Privy Council, 218–219.

Judiciary. See Courts.

Juge de paix, established, 453; functions, 456–457.

Junkers, in Prussia, 681.

Jury, use in England, 214–215.

Justice of the peace, in England, 213–214, 221.

Kantonsgericht, in Switzerland, 586.

Kautsky, Karl, opposes revisionism, 700.

Kingship (England), origins, 2–3; growth of power in Norman-Angevin period, 5; restrictions imposed in *Magna Carta*, 8–9; in Tudor period, 17–20; views of James I, 24; abolished in 1649, 27; restored in 1660, 29; altered basis after 1689, 30–33; declining powers in eighteenth century, 35–36; basis of title, 59; succession, 59–60; regencies, 60; privileges, 61; Civil List, 61–62; crown and sovereign, distinguished, 62–63; authority and uses of the sovereign, 64–65; why monarchy survives, 65–68; origins of powers, 68–70; powers of crown classified, 70–72.

Kingship (France), in eighteenth century, 358–360; abolished in 1792,

366; restored in 1814, 368; again abolished in 1848, 370; efforts to revive in 1871–75, 376–379.
Kingship (Italy), status, 520–522.
Kingship (Prussia), status, 658–659; theory of, 678–680.
Kreis, organization, 672–673.
Kreistag, in Prussia, 673.
Kultur, nature and effects, 682–683.

Labor party (Great Britain), rise, 278; success in elections of 1906, 278; organization, 279; principles, 280; influence on legislation, 280–281; supports Irish Home Rule in 1912, 291; opposes election of 1918, 325; course in this election, 327–328; disappointed at results, 329; status in new Parliament, 331; reorganization, 332–333.
Land, reform proposals in Great Britain, 301; report of Acland Committee, 302–303; reform promised by coalition ministry in 1918, 326.
Landamman, in Switzerland, 577, 585.
Landgericht, 652.
Landrat, in Switzerland, 577.
Landsgemeinde, origins and history, 576; composition, 577; meetings, 577; procedure, 578; advantages and limitations, 578–579.
Landtag (Prussia), bicameral character, 660; composition of House of Lords, 660–661; composition of House of Representatives, 661; three-class electoral system, 661–663; movement for electoral reform, 663–666; organization and powers, 666–667.
Lansdowne, Lord, resolutions on upper chamber reform, 151–152; bill on same subject, 152–153.
Law, importance and continuity in England, 206–207; growth of common law, 207–209; rules of equity, 209–210; origins in France, 448–449; great French codes, 449–452; administrative law in France, 459–460; made uniform in Switzerland, 602–603; unification in Germany, 650–651; the codes, 651–652.
Law, Bonar, on tariff reform, 300; joins Lloyd George in election manifesto, 325–326.
Law of Papal Guarantees, provisions, 540–541; papal refusal to accept, 542–543.
Legitimists, in France in 1871, 376.
Leo XIII, issues decrees *Non Expedit* and *Non Licet*, 542.
Lettre de cachet, 360.
Liberal party (Great Britain), position in British House of Lords, 146–148, 159; mid-century era of predominance, 243–245; earlier characteristics, 245–246; revival, 251–252; accession to power in 1905, 252; triumph in elections of 1906, 253; achievements in 1906–09, 253–255; contest with House of Lords, 255–256; in elections of 1910, 256–257; losses in period 1910–14, 258–259; tenets and tendencies, 260–261; composition, 262; geographical distribution, 263–265; Central Office, 267; rise of caucus, 269; National Liberal Federation, 272–275; plans for land reform, 301–303; advocates disestablishment, 304–308; opposes Education Act of 1902, 310–311; failure to carry education bill of 1906, 311–312; in coalition of 1915, 315–316; course in election of 1918, 327; defeats in this election, 329; period of dominance ended, 330; revival after 1918, 331–335.
Liberal party (Switzerland), 603–605.
Liberal Unionist, secession, 247.
Ligurian republic, established, 506; annexed to France, 507–508.
Lloyd George, David, finance proposals rejected in 1909, 149; seeks compromise on Irish issue, 318; forced to abandon Irish conscription, 319; introduces Home Rule Bill of 1919, 321; campaign pledges in 1918, 324–326; triumphs in elections of 1918, 329–330; plan to convert Coalition into permanent party, 334–335.
Local government (Great Britain), stages of development, 220–221; conditions in early nineteenth century, 221–222; Municipal Corporations Act, 222–224; mid-century confu-

sion, 224–225; Local Government Act of 1888, 225–226; District and Parish Councils Act of 1894, 226–227; central control, 227–228; county organization, 228–230; the rural district, 231; the parish, 231–232; the poor-law union, 232; the urban district, 232; borough government, 233–235; government of London, 236–237.
Local government (France), system before 1789, 465–466; changes in 1789–90, 466; experiments with decentralization, 467; centralization revived, 468; oscillations during nineteenth century, 469; municipal code of 1884, 470; deconcentration, 471; symmetry and uniformity, 471–472; the department to-day, 472–473; prefect, 473; *conseil de préfecture*, 473; general council of the department, 473–474; organization of the *arrondissement*, 474–475; the canton, 475; legal status of commune, 475; number and size of communes, 476; the communal council, 476–477; the mayor, 477–478; government of Paris, 479–480; defects, 480–482; proposed reforms, 482–483.
Local government (Italy), origins of present system, 537; areas, 537; the province, 537–538; the commune, 538–539.
Local government (Prussia), reforms in early nineteenth century, 667–668; reconstructed by Bismarck, 668; underlying principles, 669–670; the province, 670–672; minor areas, 672–674.
Local Government Act of 1888, 225–226.
Local Government Board, established, 85–86; superseded by ministry of public health, 86–87.
Locke, John, on English electoral system, 118; influence of political writings, 362.
Lombardy, French intervention in, 505; returned to Austria, 509; annexed to Piedmont, 514.
London, government of, 236–237.
Lord High Admiral, 77.
Lord High Chancellor, history and functions, 81–82; at opening of a Parliament, 163; presides in House of Lords, 171–172; nominates and appoints judges, 212, 217.
Lord High Treasurer, 75.
Lord Lieutenant, of Ireland, 286.
Lords of Appeal, in House of Lords, 143; in Judicial Committee of Privy Council, 218.
Lords spiritual, 143–144.
Louis Napoleon [Napoleon III], elected president of France, 371; becomes emperor, 372; captured at Sedan, 384; in war of 1859, 514.
Lvov, Prince, heads provisional government in Russia, 743.

MacDonald, J. R., resigns chairmanship of parliamentary labor party, 314; defeated, 329.
Macdonald, William, plan for devolution, 204.
Machinery of Government Committee, report of, 89.
McLean, Donald, chosen leader of Liberal party, 331.
MacMahon, Marshal, elected president of France, 378.
Magna Carta, grant of, 7; nature and significance, 8–9.
Majority Socialist party, assumes control of German government, 711; attitude toward the Great War, 714–715; in elections of 1920, 734–735; lose control of the Government, 736.
Mandamento, in Italy, 535, 537.
Markievicz, Countess de, elected to Parliament, 320.
Maximilian, Prince, becomes German chancellor, 709; names Ebert as successor, 711.
Mayor, becomes elective in French communes, 469; powers and functions, 477–478.
Mensheviki principles, 745.
Merit system, established in England, 90–91.
Michaelis, Georg, becomes German chancellor, 707–708.
Mill, John Stuart, advocates woman

suffrage, 126; and proportional representation, 133.
Ministry (Great Britain), composition, 73–74; the Treasury, 74–77; Admiralty Board, 77–78; War Office, 78–79; Foreign Office, 79–81; Home Office, 81; Lord High Chancellor, 81–82; Board of Trade, 83–84; Board of Education, 84–85; other regulative boards, 85–86; reorganization after 1914, 86–88; Ministry of Health, 86–87; distinguished from cabinet, 93–95; appointment of members, 96–100; responsibility, 100–101; practical immunity from parliamentary control in administration, 180–182.
Ministry (France), composition, 398; appointment, 399; selection of premier, 399–400; organization, 400–401; the under-secretaries, 401–402; responsibility, 402–404; originates bills, 436–437; degree of instability, 442; causes of instability, 443–446; elements of continuity, 446–447.
Ministry (Italy), relation to king, 520–521; composition, 522; functions, 523; status in Parliament, 523–524; frequent changes, 524; ordinance power, 524–525.
Ministry (Germany), composition in Prussia, 659; irresponsibility, 659–660; composition in Empire, 634–635; lack of responsibility, 635–637, 704–705; status in the republic, 729–731.
Ministry (Russia), becomes responsible to Duma, 743.
Monmouthshire, disestablishment of Church, 304.
Montesquieu, political views, 360–362, 365.
Municipal Corporations Act, 222.
Mutiny Act, 79.

Naples, ruled by Spanish Bourbons, 504; conquered by French, 506; Bourbon rule restored, 510; revolution of 1821, 511; revolution of 1848, 511–512; annexed to kingdom of Italy, 515.
Napoleon I, political régime in France, 367–368; supervises codification of French law, 450–451; invades Italy, 505; sets up Italian republics, 505–506; instigates monarchical reaction, 506–509; predicts Italian unification, 510–511; intervenes in Switzerland, 556; reconstructs Swiss government in 1802, 558.
Napoleon III. See Louis Napoleon.
National Assembly (France), elected in 1871, 374; tasks, 375; conflict of parties, 376; passes Rivet law, 377; adopts constitution and disbands, 379–381; elects president, 388.
National Assembly (Germany), composition and powers, 726–727.
National Council (Germany), composition and powers, 727–729.
National Council (Switzerland), composition, 587–588; officers, 589; powers and procedure, 590–593.
National Economic Council, in Germany, 722.
National Liberal Federation, 272–275.
National Liberal party origins, 686; in elections of 1912, 691–692; status in 1914, 695; succeeded by German People's party, 712–713.
National People's party, in Germany after 1918, 712.
National Union of Conservative Associations, 271–272.
Navy, administration in Great Britain, 77–78; in German Empire, 632.
Newcastle Program, 274.
Nicholas II, abdicates, 743.
Nominations, in England, 135; in France, 415.
Nonconformists, advocate disestablishment, 303–308; oppose Education Act of 1902, 310.
Non Expedit, 542.
Non Licet, 542.
North America Act, 340.
North German Confederation, formed, 616–617; merged in German Empire, 617–618.

Oberpräsident, in Prussian province, 671.
O'Connell, Daniel, leads movement for Irish autonomy, 283

Orders in council, in England, 71–72.
Osborne Judgment, 174.

Palmer, W. W. (Lord Selborne), obliged to accept seat in House of Lords, 141.
Paris, government of, 479–480.
Parish, in England, 221–222, 231–232.
Parliament (Great Britain), beginnings, 9–11; meeting of 1295, 11–12; organized on bicameral principle, 12; growth of powers, 13–14; position under the Tudors, 19–23; assertions of power under early Stuarts, 25; during Commonwealth and Protectorate, 27–28; effect of Restoration, 29–33; ascendancy of House of Commons, 36–37; power to amend constitution, 51–52; omnipotence, 53–55; control of royal expenditures, 61–62; relation to cabinet, 105–106; leadership among parliamentary bodies, 112; number of members, 113; qualifications, 113; women become eligible, 114; electoral problems at opening of nineteenth century, 115–118; reform act of 1832, 118–120; reform act of 1867, 121–122; reform act of 1884, 122–123; redistribution of seats in 1885, 123; electoral questions from 1885 to 1918, 124–126; woman suffrage movement 126–127; war-time movement for electoral reform, 127–129; Representation of the People Act of 1918, 129–134; maximum life, 134; electoral procedure, 134–137; regulation of campaign expenditures, 137–139; composition of House of Lords, 140–144; increased size of House of Lords, 144–145; breach between House of Lords and nation, 145; proposals for reform of House of Lords, 146–148; House of Lords and money bills, 148–149; movement for upper chamber reform in 1909–10, 150–152; Parliament Act of 1911, 152–155; effects of the Act, 155–156; surviving questions of upper chamber reform, 156–159; prospective relations of the two houses, 159–161; sessions, 162–163; meeting place, 164–166; officers of House of Commons, 166–168; committees, 169–171; organization of House of Lords, 171–172; privileges of members, 172–173; payment of members, 173–175; loss of power to electorate, 177–178; ascendancy of cabinet in legislation, 178–180; amount of control over administration, 180–182; general aspects of procedure, 182–183; procedure on public non-financial bills, 183–185; principles of procedure on money bills, 186–187; preparation and scrutiny of the estimates, 189–190; the budget, 190–191; proposed changes of procedure on money bills, 191–194; private bills, 195–196; rules of House of Commons, 196–197; closure, 197–198; votes and divisions, 198–199; procedure in House of Lords, 199–200; records, 200–201; congestion of business, 201–202; plans for devolution, 202–204; report of Speaker's Conference on the subject, 204–205; party organization in, 266–267; legislative power over colonies, 339.
Parliament (Ireland), abolished, 43–45.
Parliament (France), under constitution of 1795, 367; under constitution of 1814, 369–370; under constitution of 1848, 371; changes in 1869–70, 373; responsibility of ministers to, 402–404; composition of Senate, 408–411; constitutional and statutory basis of Chamber of Deputies, 411–412; growth of Chamber of Deputies, 412–413; parliamentary suffrage, 413; term and qualifications of deputies, 414–415; electoral procedure, 415–417; movement for *scrutin de liste*, 418–421; movement for proportional representation, 421–422; electoral reform bills, 422–423; electoral law of 1919, 424–427; meeting place, 428; sessions, 429; publicity of proceedings, 430; status of members, 430–432; compensation, 432; officers, 432–434; bureaus and committees, 434; development of standing committees, 435–436; rules, 437; legislative initiative, 436–437; procedure on bills, 438–439; budget-

ary procedure, 439–441; control over administration, 442–444; interpellation, 444–445; disuse of power of dissolution, 445–446.
Parliament (Italy), control over ministers, 523; composition of Senate, 525–526; causes of Senate's weakness, 526–527; proposals for upper chamber reform, 527–528; election of deputies, 529; the suffrage prior to 1912, 530–531; electoral law of 1912, 531–532; organization and procedure, 533–534.
Parliament (Switzerland). See Federal Assembly.
Parliament Act, enacted, 152–154; provisions and effects, 154–156.
Parliamentary and Municipal Elections Act, 136–137.
Parliamentary Counsel to the Treasury, 183.
Parnell, Charles Stewart, leads Irish Nationalists, 284.
Parthenopæan republic, established, 506.
Parties (Great Britain), rise, 40–41; importance and uses, 238–239; relation to cabinet system, 239–240; bi-party system, 240–241; Tory ascendancy in early nineteenth century, 241–242; mid-century period of Liberal rule, 243–246; second period of Conservative power, 246–250; the Liberal revival, 251–253; achievements and disappointments of the Liberals, 253–255; contests of 1909–10, 255–257; developments in 1910–14, 258–259; composition, 260–262; geographical distribution, 263–266; organization in Parliament, 266–267; Central Office, 267–268; local organization, 268–270; Conservative National Union, 271–272; National Liberal Federation, 272–275; rise of Labor party, 278–280; influence of Labor party on legislation, 280–281; rise of Irish Nationalist party, 283–284; Home Rule Bill of 1912, 290–295; issues classified, 296–297; tariff issue, 297–300; taxation questions, 300–301; land reform, 301–303; disestablishment of the Church, 303–308; educational issues, 308–312; truce declared in 1914, 314; coalition principle adopted, 315–316; renewal of Irish issue, 317–321; Home Rule Bill of 1919, 321–324; campaign of 1918, 324–328; results of elections of 1918, 328–330; alignments and tendencies after 1918, 330–335.
Parties (France), multiplicity and changeableness, 443; beginnings, 484–486; alignments before the Great War, 486–489; rise of socialism, 489–491; socialist unification, 491–493; growth and character of Unified Socialists, 494–496; coalition ministries of war period, 496–498; new alignments after the war, 498–500; effect of elections of 1919, 500–501; nebulous character, 501–503.
Parties (Italy), beginnings, 543–544; characteristics, 545–546; Republicans, 546; Radicals, 546; rise of Socialists, 547–548; socialist reformism, 548–549; Catholics reenter politics, 550–552; formation of People's party, 552; elections of 1919, 552–553.
Parties (Switzerland), origins, 603; present situation, 604–605; organization and machinery, 605–607.
Parties (Germany), general aspects, 683–685; older groupings, 685–686; rise of the Center, 687; growth of Social Democrats, 687–689; elections of 1907, 689–690; elections of 1912, 691–692; Conservatives on eve of Great War, 693–694; Center, 694–695; Liberals, 695; Radicals, 695; Social Democratic organization, 696–697; Erfurt Program, 697–699; revisionist movement, 699–701; Social Democrats and the government, 701–702; new groupings, in 1918, 712–714.
Payment of members, earlier history in England, 173; demanded by the Chartists, 173; effect of Osborne Judgment, 174; provided for in 1911, 174–175; in France, 432; in Switzerland, 590–593; in Germany, 646.
Peel, Robert, premiership, 243.

Peerage, in British House of Lords, 141–142.
People's party in Italy, 551–552.
Piedmont, annexed to France, 507; independence restored, 509; revolution of 1821, 511; constitution granted, 512; becomes leader in Italian unification, 513; Cavour's policies, 513–514; annexations in 1859–60, 514–515; merged in kingdom of Italy, 515–516.
Pitt, author of Union Act of 1800, 44.
Pius IX, refuses to accept Law of Papal Guarantees, 542.
Pius X, relaxes ban on political activity of Catholics in Italy, 550.
Place Act, 97.
Plural voting, movement to abolish in England, 125; restricted by act of 1918, 130.
Poincaré, Raymond, describes French presidential election, 389.
Poor-law, administration in England, 222–223, 232.
Poor Law Board, superseded by Local Government Board, 225.
Pope, loses temporal possessions, 540; provided for in Law of Papal Guarantees, 541; refuses to accept new arrangements, 542–543; relaxes ban on political activity of Catholics in Italy, 550; sanctions formation of People's party, 551.
Post Office, in Great Britain, 76.
Poyning's Law, 43.
Prefect, established, in France, 468; powers and functions, 473–474; in Paris, 479–480; in Italian province, 537.
Prerogative, development in England, 68–69.
President (France), mode of election, 388–389; term, 390; qualifications and re-eligibility, 391; immunity from political responsibility, 392; powers, 392–395; relations with ministers, 396–397; selection of premier, 399–400; power to dissolve Chamber of Deputies, 429; right to initiate legislation, 436.
President (Switzerland), 597–598.
President, in German republic, 729.
Preuss, Hugo, prepares draft of German constitution, 719, 723.
Prime minister, mode of selection in Great Britain, 96–97; nominates other ministers, 97–100; leadership, 102–104; selection in France, 399–400; relation to other ministers, 400–402; in Italy, 522–523.
Prince of Wales, membership in House of Lords, 140.
Privy Council, origins, 15–16; importance in Tudor period, 18–19; rise of cabinet from, 37–38; organization and functions, 93–94; functions of Judicial Committee, 218–219.
Procedure, on public non-financial bills in British Parliament, 182–185; on money bills, 186–191; proposed alterations, 191–194; on private bills, 195–196; in French Parliament, 436–441; in Italian Parliament, 533–534; in German Reichstag, 645–647.
Progressist Republicans, in France, 488.
Progressive party, in Prussia before 1871, 685.
Proportional representation, movement in England, 133; advocated in France, 421–422; adopted in 1919, 425–427; in Switzerland, 580–581.
Prorogation, of British Parliament, 163.
Protectorate, in England, 28.
Province, area of Italian local government, 537–538; organization in Prussia, 670–671.
Provinzialausschuss, in Prussia, 671.
Provinziallandtag, in Prussia, 671.
Provinzialrath, in Prussia, 671.
Provisional orders, 196.
Prussia, liberal movement in 1848, 612–613; failure of movement, 614; receives constitution, 614; builds up Zollverein, 615; Bismarck's policies and measures, 615–616; war with Austria, 616; creates North German Confederation, 616–617; creates the German Empire, 617–618; special position in the Empire, 625–627, 654–655; nature of constitution, 655–657; the king, 658–659; the ministers, 659–660; the *Herrenhaus*, 660–661; the *Abgeordnetenhaus*, 661; three-class electoral system, 661–663;

movement for electoral reform, 663–665; functions and powers of *Landtag*, 666–667; development of local government, 667–669; underlying principles of administration, 669; the province, 670–672; minor areas, 672–674; survival of absolutism, 675–676; the Hohenzollern dynasty, 676–678; William II and divine right, 678–680; status of army, 680; the Junkers, 681; *Kultur*, 681–682; political parties, 683–702; electoral reform promised, 707; king and crown prince abdicate, 711–712.
Public Health, ministry established in Great Britain, 86–87.
Public opinion, increased power in England, 177–178.

Qualification of Women Act, 114.
Quirinal, 540.

Radical party, formed in France, 485; in *bloc*, 488; in Italy, 546; in Switzerland, 603–605; in Prussia before 1871, 686; losses in 1912, 692; status in 1914, 695.
Radical Socialist party, in France, 488, 494; breaks up, 499, 501.
Reactionaries, in France, 485.
Records of British Parliament, 200–201.
Referendum, growth of idea in England, 52; Lord Lansdowne's resolutions favoring, 151–152; as a party issue in Great Britain, 297; origins in Switzerland, 581; operation in the cantons, 582–583; in the federal government, 593–594; results, 594–595.
Regierungsbezirk, in Prussia, 672.
Regierungspräsident, in Prussia, 672.
Regierungsrat, in Switzerland, 584.
Regionalism, in France, 482–483.
Registration of voters, provisions of act of 1918 in Great Britain, 133–134; in France, 413.
Reichsgericht, 653, 731.
Reichskanzler. See Chancellor.
Reichsrath, composition and powers, 727–729.
Reichstag, approves German imperial constitution, 619; composition, 643; distribution of seats, 644; electoral system, 644–645; sessions, 645; pay of members, 646; organization and procedure, 646–647; lack of power, 647–649; mediocrity of members, 649–650; in German republic, 726–727.
Republicanism, early views on, 365; rise in France, 365–366; government of First French Republic, 367; triumphs in 1848, 370; gives way to Second Empire, 371–372; again triumphs in 1871–75, 374–379; constitution of Third French Republic, 381–386; triumphs in Germany in 1918, 711; republican constitution framed, 718–720; characteristics of constitution, 720–723; triumphs in Russia, 743–744; as applied under Russian Soviet constitution, 748–754.
Republican party, in France, 484–486; in Italy, 546.
Restoration, in England, 28–30.
Revisionism, in Germany, 699–701.
Ribot, Alexander, premier in France, 497–498.
Rivet, Charles, introduces bill concerning French presidency and ministry, 377.
Rome, becomes capital of Italy, 540.
Rosebery, Lord, becomes prime minister, 96, 249; proposals for upper chamber reform, 148; Chesterfield speech, 251.
Rousseau, Jean Jacques, political views, 361–362.
Rules, of British House of Commons, 196–197.
Russia, early political development, 738–741; revolution of 1905, 741–742; political unsettlement during Great War, 742–744; revolution of March, 1915, 745; rise of soviets, 745–746; bolshevist revolution, 746; constitution of 1918, 748–751; soviet system of government, 751–754.

Salisbury, Marquis of, premiership, 247–249.
Scotland, union with England, 42–43; quota, seats in House of Commons,

113, 121, 123, 132; representation in House of Lords, 142; legal system, 210; Liberal preponderance in, 265.
Scrutin d'arrondissement, periods of use in France, 418–419; objections to, 420–421; abandoned in 1919, 425.
Scrutin de liste, under French constitution of 1814, 369; under constitution of 1848, 371; periods of use in France, 418–419; arguments for, 420–421; relation to proportional representation, 421–422; reëstablished by law of 1919, 425.
Seize Mai crisis, 445.
Select Committee on Estimates, 193.
Select Committee on National Expenditure, report of in 1918, 193.
Senate (France), right of interpellation, 403; composition, 408–409; electoral changes in 1884, 410; proposal of direct election, 410–411; assent required for dissolution of Chamber of Deputies, 414; place of meeting, 428; sessions, 429–430; compensation, 432; officers, 432–433; bureaus and committees, 433–436; process of legislation, 436–439; interpellation, 444–445; as a high court of justice, 463–464.
Senate (Italy), composition, 525; growth, 526; causes of weakness, 526–527; proposals for reform, 527–528; organization and procedure, 533–534.
Separation of powers, in England, 56–57.
Sheriff, in early England, 4–5.
Shire, in early England, 4.
Simon de Montfort, convenes a parliament in 1265, 11.
Sindaco, in Italian communes, 539.
Sinn Fein, origins and aims, 317; holds convention at Dublin, 319; successes in elections of 1918, 320, 328–329; opposes Home Rule Bill of 1919, 322–323.
Smith, Thomas, treatise on English government, 23.
Social Democratic party, in Switzerland, 604–605; established in Germany, 687; growth, 687–688; in elections of 1907, 690; in elections of 1912, 691–692; organization and activities, 696–697; Erfurt Program, 697–699; revisionist movement, 699–700; moderate character, 701; establishes provisional government in Germany, 711; splits into two groups, 713–714; in elections of 1920, 734–736.
Socialism, growth in Great Britain, 277–278; rise in France, 489–490; dissensions, 491–492; unification, 492–493; growth after 1905, 493–494; aims, 494–495; prospects, 495–496; status after Great War, 499; loss in elections of 1919, 500; beginnings in Italy, 547–548; reformism in Italy, 548–549; opposition to Italy's entrance into Great War, 551; success in elections of 1919, 552; status in Switzerland, 604–605; organization in Germany after 1850, 687–689; in elections of 1907 and 1912, 690–692; organization and activities, 696–697; Erfurt Program, 697–699; revisionist movement, 699–701; in control of German government, 711–714.
Society for Constitutional Information, 118–119.
Solicitor-General, in Great Britain, 83.
Sonderbund, in Switzerland, 560.
Sonderrechte, in Germany, 626.
South Africa, acquires self-government, 345; governmental system, 345–346.
Sovereignty, location in Switzerland, 566–567; in German Empire, 622.
Soviets, origins, 744; pass under Bolshevist control, 746.
Spartacist (Communist) party in Germany in 1918, 715; opposes election of 1919, 717.
Speaker, powers conferred by Parliament Act of 1911, 154; election, 166–167; functions, 167–168; compared with president of French Chamber, 433.
Speaker's Conference on Devolution, report of, 204–205.
Spoils system, in England, 90; in France, 404–406.
Staatsgerichthof, in German republic, 731.

Stadtrat, in Switzerland, 585.
Star Chamber, court of, 211.
Statuto fondamentale del regno, granted in Piedmont, 512; becomes constitution of united Italy, 515–516; characteristics, 516–519.
Statutory orders, in England, 71–72.
Stein, Baron, reform of Prussian local government, 610, 667.
Sub-prefect, in France, 474.
Suffrage, English, statute of 1429, 21–22; state in England in early nineteenth century, 116–117; as altered by reform act of 1832, 120; by act of 1867, 121–122; demand by women, 126–127; bill of 1912, 127–128; alterations by act of 1918, 129–132; arguments on woman suffrage, 131; status, in France, 413; in Italy before 1912, 529–531; under electoral law of 1912, 531–532; in Germany before 1918, 643–644, 661–665; in German republic, 726–727; in Russia under constitution of 1918, 748–751.
Supply services, in Great Britain, 187–188.
Supreme Court of Judicature, in England, 217.
Switzerland, political importance, 554–555; physical basis of political development, 555; races and religions, 555–556; French intervention of 1798, 556–558; reorganization in 1803, 558; and in 1815, 559–560; the *Sonderbund*, 560; constitution of 1848, 561; constitution of 1874, 561–562; form of constitution, 562; federal system of government, 565; relations of federal and cantonal governments, 566–567; division of powers, 567–568; military system, 568; government monopolies, 568–569; public finances, 570; cantonal administration of federal laws, 571; citizenship and naturalization, 571–572; rights of the individual, 573; status of cantons, 574–575; the *Landsgemeinden*, 575–579; cantonal legislatures, 579–580; proportional representation, 580; cantonal referendum, 581–583; cantonal initiative, 583–584; cantonal administration, 584–586; cantonal judiciary, 586; National Council, 588–589; Council of States, 589–590; powers of Federal Assembly, 590–592; procedure of Federal Assembly, 592–593; federal referendum, 593–595; federal initiative, 595–597; Federal Council, 597–600; the president, 597–598; the judiciary, 600–603; development of political parties, 603–605; party organization, 606–607.

Tariff, as a party issue in Great Britain, 298–301.
Tariff reform, advocated by Joseph Chamberlain, 251.
Tariff Reform League, 298–299.
Taxation, as a party issue in Great Britain, 300–301; control in Switzerland, 570.
Thiers, Adolph, becomes "chief of the executive power," 375; difficulties of position, 377; made president, 377; declares for republicanism, 378; resigns, 378.
Tiberine republic, established, 506.
Tocqueville, Alexis de, view of English constitution, 46–47.
Tory party, in seventeenth century, 41; ascendancy, 241–242. See Conservative party.
Township, in early England, 3–4.
Trade union development in Great Britain, 276–277.
Trade Union Act, of 1913, 174–175.
Treasury (Great Britain), organization and functions, 74–77; part in preparing the estimates, 188–191.
Treasury Bench, 165.
Treaty-making, in Great Britain, 80; in German Empire, 631.

Uffici, in Italian Parliament, 533.
Ulster, plans in 1918 affecting, 319; provisions for, in Home Rule Bill of 1919, 322.
Ulster, protests against Irish Home Rule, 292–294.
Under-secretary, in Great Britain, 73; in France, 401–402; in Italy, 523.
Unified Socialist party, formed, 493; growth, 493–494; program, 494–

495; composition, 495–496; recovery after Great War, 499; loss in 1919, 501.
Unionist party. See Conservative party.
Union Républicaine et Démocratique, in France, 500.
United Kingdom of Great Britain and Ireland, creation of, 43–45.
Universities, representation in House of Commons, 130–131.

Valera, Eamonn de, leader of Sinn Fein, 318; elected president of the Irish republic, 321.
Vereinigter Landtag, convoked in Prussia in 1847, 612.
Versailles, becomes seat of French government, 376; constitutional amendments considered at, 384; president elected at, 388; legislative chambers removed from, 428; William I crowned at, 618.
Veto, obsolete in Great Britain, 48; disallowance of colonial legislation by British crown, 339; in Italy, 521; in German Empire, 630.
Victor Emmanuel II, accession in Piedmont, 513; makes Cavour prime minister, 513; becomes king of Italy, 515.
Victor Emmanuel III, popularity, 521.
Victoria, Queen, participation in public affairs, 64–65.
Viviani, reorganizes French ministry in 1914, 496; resigns, 497.
Voltaire, upholds absolutism, 360–361, 365.
Vorparlament, at Frankfort, 613.

Wales, union with England, 42; quota of seats in House of Commons, 113, 121, 123; disestablishment of Church, 144, 156, 304–308; Liberal preponderance in, 265.
Wallon resolution, 380.
Walpole, Robert, premiership of, 36–37, 40, 102.
War Cabinet established in Great Britain, 107–108; records, 108; methods of work, 109–110; terminated, 110–111.
War Office, in Great Britain, 78–79.
Weimar, German constituent assembly meets at, 718.
Welsh Church Acts, 304, 308.
Westminster, meeting-place of Parliament, 164–166.
Whig party, in seventeenth century, 41. See Liberal party.
William I, seeks to reorganize German armed forces, 615; crowned at Versailles, 618.
William II, accession, 678; political ideas, 678–680; attitude toward army, 680; sensational interview in *Daily Telegraph*, 703–704; promises political reforms, 709; abdicates, 711.
William III, accession, 31; ideas of kingship, 35.
Wilson, Woodrow, demands reform of German government, 710.
Witenagemot, 3.
Woman's Social and Political Union, 126.
Württemberg, reserved rights, 627.

Young Italy, 511.

Zabern incident, 705–706.
Zemski Sobor, convened, 739.
Zemstvos, established in Russia, 739.
Zollverein, 611.

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